SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 344

ATLANTIC COAST LINE RAILROAD COMPANY, APPELLANT,

vs.

STATE OF FLORIDA AND E. S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, ETC., ET AL.

No. 345

STATE OF FLORIDA AND E. S. MATTHEWS, MAMIE EATON-GREENE, AND W. B. DOUGLASS, ETC., ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA

VOL. II.

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Q. Then Mr. Lamb, that being a typical month on the Hines-Palatka movement of logs the gross revenue for the [fol. 1634] average year arising out of that particular log train movement would exceed your out of pocket expenses as you have put them down, by some $90,000 wouldn't it. As you put the out of pocket expense down on that slip.

A. The total revenue for the year?

Q. Yes.

A. Assuming it was $10,000 per month it would be $120,000 per year.

Q. I want you to multiply the $7,600 which you testified was the excess of gross revenue out of pocket expenses in the log train movement from Hines to Palatka for a typical month, for November 1930, I want you to multiply that $7,600 by 12 and thus produce more than $90,000 excess gross revenue over out of pocket expenses for that log train movement from Hines to Palatka for the typical year, is that correct?

A. That would be approximately ninety-two thousand dollars, but the $2,398.55 represents the out of pocket expenses when raised to represent 100% of haulage expenses.

[fol. 1635] A. I gave you an answer and now I am adding another statement completing my answer. If the haulage expenses represent 25.9405%, then the total expenses would be $9,246.50.

Q. Wait a minute. That 25.9405% you produced there did you not on a basis of carload movement as distinguished from trainload movement?

A. That is the ratio of out of pocket expenses.

Q. Answer my question please. Is that applicable to carload or trainload?

A. The relation of out of pocket expense to total car haulage expenses.

Q. Carload?

A. Carload or less than carload. If you have got $2,398.55 of out of pocket expenses, that represents 25.9405% of your total haulage expenses and divide those expenses by that percentage and multiply by 100% to get $9,246.50 for operating expenses and add to that figure 15% for taxes and you would have as a total expense including taxes, $10,633.52, and to that add three and two-tenths percent for re-

turn on investment and it would show very clearly that there was nothing left.

Q. Go ahead and do all your adding and then I want to ask you (P. 405 of testimony) something about it.

A. We add $3,510.05 to that, to your $10,633.52, that is return on investment and we have a total of $14,143.57. That includes what it actually costs us to haul these logs.

[fol. 1636] Q. Now, take off from your $14,000 total, Mr. Lamb, the out of pocket expense which you have made up and have put on the bottom of your exhibit 23, $2,398.55 and see what you have then.

A. $11,745.02.

Q. Now, your out of pocket expense for the transporting, for the conducting of that log train service for that month was $2,398.55, and the other expenses you are putting on to it are $11,745.02, or more than five times your out of pocket expenses.

A. That includes the taxes and return on investment.

Q. Now, assuming that you didn't have any of that log train movement; that you moved out and heaved overboard your $7600.00 gross revenue from it. How much of the $11,745.02 additional expenses did you have in there?

Objection by Mr. Alston.

A. As these figures $11,745.02 are built up on the basis of the $2,398.55, if you reverse your calculations you would have $2,398.55 for out of pocket expenses.

Q. The question I asked you was if you discontinued the log train movement from Hines to Palatka and return, how much of that $11,745.02 would the Atlantic Coast Line Railroad Company have to pay just the same?

Objection by Mr. Alston.

A. You would have to work it out and that is a difficult calculation to work because there would be some out of pocket expense if you discontinued the train entirely.

Q. You would save the $2,398.55?

[fol. 1637] A. I have already taken that off. It was $14,000 then. You had the $14,000 then and now you have taken off your $2,398.55 for out of pocket expenses, which left $11,745.02.

Q. If you would reverse your return on investment, about $3,510, we would not have that return on investment and the taxes that were paid would be paid anyway.

A. Where you are determining the cost of handling any commodity it should bear its full proportion of taxes, operating costs and return on investment.

Q. I am not asking you for your opinion on that but would be happy to have it. But you have to pay those expenses just the same, I mean the taxes?

A. Yes, certainly.

Objection by Mr. Alston.

Q. You handle something else on that railroad besides logs don't you, or do you not?

A. We handle some other business.

Q. Therefore, the road would have to be maintained would it not?

Objection by Mr. Alston.

A. Why, if a track is operated over it necessarily has to be maintained but that does not lessen the fact that this traffic should bear its proportionate rate of expense.

Q. You would not be able to do away with the superintendents or any of the other maintenance charges that you are charging in that eleven thousand dollars worth of business there.

A. The same thing would apply to superintendents that would apply to any other commodity if we discontinued to handle it.

Q. The superintendents would still go on if you remained in the railroad business.

[fol. 1638] A. Certainly.

Q. Now, as I understand your calculations to be, that on that log train movement down there your gross revenue is approximately three and a half times your out of pocket expenses according to your Exhibit No. 23.

A. That is substantially so.

Q. And that expense, by this computation of system averages that you harp on, to the cost of transporting logs is more than five times the out of pocket expenses that you calculate are truly chargeable to that transportation?

A. When you include the interest on investment and taxes that does not represent the total expense. Out of

that movement there would be a gross revenue in excess of out of pocket expenses for the cost for a year of something more than ninety thousand dollars but not when you add your totals. Understand that I am talking about the other part of your expense, as to out of pocket expenses, but now, as to all expenses your total figures as offset in that $92,000 would be about $169,000.

Q. Tell me how much of that $169,000 you would have to expend if you discontinued your log train movement.

Objection by Mr. Alston.

A. Of course, your Honor, included in that figure is your return on investment, that we either lose or do not lose, though we are entitled to it whether we get it or not. While [fol. 1639] we are not earning it at this time, a rate, to be reasonable should pay this expense, proportion of taxes and a reasonable return on investment.

Mr. Gutheim:

Q. Is that also built up so that the total brings it up to all operating expenses plus taxes plus return.

A. No, sir, that is the hauling expense only.

Q. It includes all the haulage expenses of all the traffic on the third division?

A. No terminal expense or yard expense or no other expense incident to that traffic.

Q. Now, in those hauling expenses, coming back for a moment to your Exhibit 5, are you informed concerning the method of segregating haulage expenses from total operating expenses, which has been sanctioned by Mr. M. O. De Lorenzy, Chief Statistician for the Interstate Commerce Commission.

A. Do you have reference to the figures put in by Mr. Pettyjohn?

Q. The figures that your Mr. McCain of the Atlantic Coast Line put in for the fruit and vegetable products.

A. Isn't that the same basis that Mr. Pettyjohn used in Washington when he produced a figure of something like ten million dollars?

Q. I think so but I am not sure. What I want to know is if you know of this method of segregation as sanctioned by this statistician of the Interstate Commerce Commission.

A. Yes, sir, but I did not use it. I think in my illustration here in my exhibit No. 5, I have set out specifically the accounts I have eliminated. I will tell you what Mr. De Lorenzy's formula is. He takes the yard accounts in this [fol. 1640] very statement and he would get in the maintenance of way and structure accounts $849,955; in the transportation account as attributable to yard, $3,875,981.00 or a total attributable to yard of $4,725,936.00. He would likewise take from the maintenance of way and structure and assign to road $4,457,064, and he would take in the (P. 410 of testimony) transportation block of expenses $6,758,-182.00, making the total road accounts, $11,215,345.00. The grand total of these accounts that he would allocate as to road and yard expenses total $15,941,182. But divide that figure into yard accounts, he says that yard expense represent 29.6461%. Then he draws on the assumption that all other expenses in the car account bear the same relations to these allocated yard accounts and he applies 29.6461% to the total expenses that I have shown on my Exhibit No. 5 as $36,308,812.74, and he would find that under that theory the terminal or yard expenses would be $10,764,147. Now, those would be the figures that would be developed from the $36,308,812.74 instead of the 9,607,000 dollars which I developed. If you deducted $10,764,147 from the $36,308,-812 you would have as haulage expenses $25,544,665. The out of pocket expenses shown on Exhibit No. 5 are $6,920,-683.75, or represent 27.0924% for these haulage expenses, which I will determine on the basis that Mr. Gutheim has mentioned. Now, if we take this point, .0882888 cents and divide it by this 27.0924% and multiply it by 100, we would obtain as a cost per gross ton mile 3.25889 as compared with 3.406309 used by me and on the movement of 81.36 miles, [fol. 1641] line 11, Exhibit 7 would then show $16.27 instead of $17.01, or a difference of 74 cents on a car. Our auditor, Mr. McCain in another proceeding before the Interstate Commerce Commission, known as document I. C. C. 17936, may have used the Lorenz method. With respect to my exhibit No. 23, the individual out of pocket expenses, the items that I show thereon were not compiled from basic figures of different records in my office because the payrolls are kept in the superintendent's office. I can file the statement received from Superintendent Langley with this

letter of transmission showing these figures. I did not personally check these figures to determine the payroll items included in these out of pocket costs on Exhibit No. 23. I used the figures that were submitted by Mr. Langley. There are no supplies included in this statement except train supplies and expenses.

Those were furnished by the Superintendent of motive power who is Mr. Langley. I went over those figures with his chief clerk in every item except the train engineman Account 392 and Account 401, Trainmen. I went over it personally with the chief clerk of the superintendent of motive power. He brought into my office certain of the basic documents that were used in determining the figure that should be reported and went over certain of those documents personally. I did not necessarily tell him what items to include and what not to include. He knew that I wanted the expenses assigned to this train and he brought in the records that he had in his office showing just what [fol. 1642] the expenses were. Some were vouchers and some were issues and on the fuel he had the fuel vouchers or tickets issued at each place. The reason for his bringing those documents to me was in order that he might clearly understand what I had requested. I then told him just what it was I wanted. I told him I wanted the expenses absolutely assignable to this log train for the month of November. Then he proceeded to get them from the basic data. I went over the figures with him. He finally accumulated the totals. I went over in detail many of the papers and together we checked over items to be sure we were getting correct figures. I didn't total the final figures. I checked them after they were totaled. Going back to this question of Mr. Adair's with respect to the total figure of $14,143.57, covering the building up of haulage cost for these log trains in the month of November 1930, the actual out of pocket cost that I show on this Exhibit 23, is $2,398.55 so that the building up items to make haulage costs plus taxes plus five and three-quarters percent return amounted to $11,745.02. For the operating expenses items in the last total there is included a proportionate amount of the haulage expenses for all of the other traffic in the third division.

Q. What of these particular haulage expenses in proportionate amount on that traffic would be eliminated if in that month you had not run that log train?

Objection by Mr. Alston.

Court: Answer the question.

[fol. 1643] A. I am unable to say, off hand what that amounted to.

Q. Can you figure it out?

A. I think that would be asking for an unreasonable amount of labor. It would require a good deal of work and couldn't be done during this session. I would have to go over every account and analyze and consider it and work out the proportion assignable to this traffic.

Q. Go to your Exhibit 5, where you produced the amounts you treated as so-called haulage expenses and take the first item in account 201, Superintendents, amounting to $269,-028.01, how much of that would be eliminated if, in the month of November, 1930, you had not run the Hines-Palatka log trains on the Atlantic Coast Line.

A. I am unable to state.

Objection by Mr. Alston.

Taking my item of roadway maintenance on yard, $572,-863.10, I am unable to state how much of that would have been eliminated if, in the month of November, 1930, we had not run these log trains. It may have been that some particular part of it could have been eliminated. I am unable to state the particular item but there may have been some that could have been eliminated if we had not operated trains. We might not replace ties if we did not oper-[fol. 1644] ate a train on that line.

Q. Would you have abandoned the track between Hines and Palatka? (P. 415 of testimony.)

Objection by Mr. Alston.

A. We couldn't do it. We would have to get authority from the proper source to abandon any track. We would not necessarily have to maintain it if we found there was not enough traffic to maintain it. We would not. If we found we could not maintain it I am unable to state what difference it would make in this particular figure. I am

unable to state specifically what items could have been saved, if any.

Q. Mr. Lamb, in raising out of pocket expenses to total haulage expenses you assume that the logs there, their expenses, on the basis that you have calculated, to be as accurate as possible for out of pocket expenses, that is in the aggregate.

A. In other words, you mean that they bear proportionate part of the haulage expenses.

Q. Yes, you building it up by expanding.

A. Yes, sir. In building it up, I do not do it from hauling expenses as a whole, with the yard expenses, without any individual item of haulage expenses. I adopted the same principal that Dr. Lorenz adopted in terminal expenses. In determining what our haulage expense is, it is true we expanded our out of pocket cost to add in a proper proportionate distribution of the share that should be borne [fol. 1645] by that traffic to the other hauling expenses. It is correct that we do that by working that haulage expense as a whole and adding on the item that you finally determine to be haulage expense. We have not done that with respect to any individual item of haulage expense. It would be very foolish to work the multiple calculations necessary to do that. I have nothing, therefore, to show the individual items of haulage expenses. I think the expenses shown in Column A are understated. I want the Court to bear in mind that I have not in any of the calculations in Column A included one dollar of yard expense or station expense and any of the items that I have in the column eliminated and the proportionate part of many of these items should be included. That was in Column A, purporting to be the average for hauling the average commodity the average distance. You would apply that to anything that was hauled. I would apply it to any commodity that was handled. But the expense which is caused in perishables in l. c. l. traffic would cost more than if all logs could be eliminated. All yard expenses and your station employees expense has been eliminated which constitutes a very large item of expense and l. c. l. business which Mr. Pettyjohn testified amounted to about $4.22 a ton. I wouldn't say that even with that out, that logs should be as high a traffic as perishables.

Redirect examination.

By Mr. Alston:

[fol. 1646] Going back to this out of pocket expense on my exhibit No. 23 amounting in the aggregate to $2,398.55, the gross revenue, produced by the train described in Exhibit 23, hauling logs from Hines to Palatka and the empties back, would or did produce the aggregate $10,035.26 of gross revenue for the month of November, 1930. And on the basis of this exhibit, deducting the out of pocket expenses and state $2,398.55, there was a remainder of $7,637.65. The claim that this is profit would be absolutely not right. It is correct that from my calculations based on the percentages which out of pocket expenses in this distance of the Atlantic Coast Line held to the total expenses during the period under inquiry at this hearing, the total expenses attributable to this train before coming to a return on property was $10,632.52, it is correct that under that calculation, before coming to any return on any property used in this transaction, there was a loss of $598.33 and if we had come to a return on property there would have been a greater loss. In the performance of this haulage between Hines and Palatka the railroad furnished a right of way for this traffic, with such things as may go with it, stations and tracks, there being 119 miles, and the other things incident thereto. My figure $10,632.52 takes into account no rent whatever on that 119 miles of property in rails, sidings, trestles and other things. Where that property is used in rendering service, in my opinion it would be improper for it to be left out of consideration and it would likewise be improper to leave out the out-of-pocket expenses found in the eight items as they are listed in my exhibit. [fol. 1647] The items which go to make up the expenses which have been set out in my Exhibit 5, there are a great many of such expenses, the whole expense of doing business, I mean the out-of-pocket expenses for doing freight business over this distance of Florida for the year ending December 20, 1929, was, according to my Exhibit No. 5, $6,920,683.75, or of a gross freight expense of $36,308,812.74, so, after all, the out-of-pocket expenses represent only a relatively small part of the gross expense. In the operation of this railroad and of this particular part of this system of railroad, to my knowledge there is no part

of this expense which could be eliminated in good railroad maintenance. I don't think there is any system of rate-making under which any part of the traffic or transportation done over a line can shirk its fair and proper part of the cost of operating and maintaining that property and carrying on their business. Within my knowledge the Commission has never sanctioned it. If you are going to eliminate or if you are going to exempt one specific form of traffic from carrying its proportion of cost and burden of that transportation it would have to be borne by some other traffic, with the result that if you just continue for one after another, they would all be finally part of one kind of traffic. The rate per one hundred pounds on logs on the movement between Hines and Palatka is 3.2 cents. That covers 119 miles. That would be approximately five mills [fol. 1648] per ton. I wouldn't say that is a very low cost because the average for handling coal, as mentioned, is placed at five mills per ton mile. In making that distribution of interstate revenue, Florida was credited with this mileage of that 15% arbitrary. Now, let us see the effect or our results in 1930 on the total interstate business in Florida of $7,108,188. Now, let us assume that 75% of all Florida interstate business, or $5,331,141, carried this 15% arbitrary. If we added 15% to the $5,331,141 we would add to the Florida revenue $799,772, but as we assigned operating expenses on a revenue basis and the system ratio for 1930 was 78.84%, we would assign to Florida $630,461 more operating expenses, but it would increase our net railway operating income about $169,311. If you will refer to 1930 on my Exhibit 2, you will find in line 29, shows the net railway operating income as $1,203,921.65. Now, if we add to that this $169,311, we would increase the net railway operating income shown on my exhibit to $1,373,233. That net railway operating income would make a return of 1.34% instead of 1.17%. 1.34% is only 23% of the five and three-quarters per cent., reasonable return. Now, going further and assuming that every dollar of interstate revenue should carry this 15% arbitrary, which would be added to Florida, and adding in proportion the additional amount of expenses, it would increase our re- [fol. 1649] turn from 1.17% to 1.39% or only 24% of the five and three-quarters per cent., but, of course, this overstates the figure because Florida has already received this

mileage pro rata from this arbitrary in this distribution. I just wanted to show the effect of this 15% arbitrary.

By Mr. Gutheim: (P. 425 of testimony.)

I know that an application was made before the Interstate Commerce Commission last summer by the carriers, including the Atlantic Coast Line Railroad Company, whereby 15% increase in freight rates was sought. I know that increase so sought was denied. I don't know why they denied it. They didn't decide it out to any individual road but the country as a whole.

Q. Do you know that the carriers made a showing that they were not making five and three-quarters per cent. or anything like it, and the increase was denied?

A. The records show that the increase was denied at that time but the Commission did allow a certain increase later. I think it is correct that a certain scale of so-called emergency charges was authorized by them, much less than 15%. The Atlantic Coast Line Railroad was not earning anything like five and three-quarters per cent. Yes, I was with the Louisville & Nashville Railroad before I came to the Atlantic Coast Line. I know that the Louisville & Nashville Railroad handles many millions of tons of bituminous coal in Kentucky. Most of that is moved by the Louisville & Nashville both by Cincinnati and Louisville. To my recollection it is right to say that the Louisville & Nashville Railroad, through the heavy volume of coal known as Lake Cargo Coal is earning as much as five mills [fol. 1650] on a ton mile and I distinctly recall making some investigation for our president, M. M. H. Smith, and he at one time testified that the cost was more than five mills per ton per mile for the coal from the coal fields near Norton, Virginia, to Cincinnati, carrying that Lake Cargo traffic, and I am not able to state definitely the revenue per ton per mile but I know that was the cost that he used in defending the application for rates and whether it was increasing or opposing a reduction I don't know. I know also, that the Cincinnati & Ohio Railroad and the Norfolk & Western Railroad handled many millions of tons of bituminous coal per year, but I don't know whether the Norfolk & Western and the Chesapeake & Ohio Railroad earned as much as five mills a ton per mile.

By Mr. Adair:

Q. Mr. Lamb, you said that everything had to bear its fair share of all cost, regardless of whether it could bear it or not.

A. I didn't make that statement.

Q. I got that impression. That everything had to bear its share. Surely, I don't understand you to mean that gold and silver, silk and satin are not to bear a larger share of your system expenses than the lower grade commodities, like logs and the like?

A. I have never considered handling gold. Of course, the rates on silk are higher, but on coal they are also higher than on logs.

[fol. 1651] Q. Isn't that one of the fundamentals of the railroad business, what the traffic would bear?

A. I am not a traffic man and I am not qualified to answer that.

Q. The point is, if you don't have volume you don't have revenue.

A. Volume don't mean anything. If you cannot get net out of it.

Q. If you don't have volume you don't have revenue.

A. If you don't move anything you wouldn't have revenue, that is true.

Motion by Mr. Adair to strike all of the testimony of Mr. Perrin and of Mr. Lamb upon the subject of the reasonableness or unreasonableness of the Cummer Scale upon the grounds that it is immaterial and irrelevant; that it cannot affect the right of the complainants to restitution and that it cannot affect the duty of this company to right the wrong that it has done to this claimant.

Hearing adjourned until May 30, 1932 at Wilmington, North Carolina.

Hearing reconvened at Wilmington on May 30th, 1932. Present as before with the exception of Mr. Adair.

J. E. Willoughby, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

I am chief engineer of the Atlantic Coast Line Railroad Company and some of its subsidiary lines. I have been

[fol. 1652] connected with the Atlantic Coast Line since 1913. I was assistant chief engineer for two years and chief engineer for the remainder.

Q. Mr. Willoughby, I will show you an exhibit by Mr. Lamb in this case and the line marked 2 on that exhibit is investment in road and equipment, account 701. It is purported to show for the year 1922 to and including 1931, the figures showing investment in road and equipment for the Atlantic Coast Line Railroad for those several years. In it is included, as we will hereafter show, the valuations of the terminals at Brunswick, Georgia and at Port Tampa, Florida. Will you please tell the Court what is the (p. 430 of testimony) relation of each of these terminals to the Atlantic Coast Line Railroad.

"Mr. Ashby: Before we go into this I wish to have it understood that the objections we made to this same line of testimony will be considered as taken to the testimony in this examination.

"Mr. Alston: Yes, sir."

A. The terminals in Brunswick and Port Tampa, Florida are usually excluded by the Atlantic Coast Railroad in the transaction of its rail and water business. Those terminals are owned by the Atlantic Land & Improvement Company, except the tracks. The value of the Brunswick property is $274,555. The value of the Port Tampa property is $2,215,320.00. I am familiar with the property of the Atlantic Coast Line Railroad Company throughout its system. I am familiar with the book values of these properties as they are reported in the annual reports. I am in charge of the valuation work of the Atlantic Coast Line. In my opinion, and based upon my knowledge of those properties or on my connection as chief engineer, the properties are very much more valuable than the book values. I am in charge of [fol. 1653] the valuation department and in connection with them we have made extensive studies to determine first, the cost of the reproduction of the property and next, the values of the land and next, the worth of other elements of value. I have given consideration to that valuation as long as I have been connected with the Atlantic Coast Line Railroad but I was not in charge of that valuation department throughout that time. I became in charge of the valuation department about twelve or fourteen years ago. I have made appearances before the Interstate Commerce Com-

mission's valuation department on this subject. My statement relative to the book values and actual values of the property applies to all of the years 1922 through 1931. In the valuation of the Atlantic Coast Line Railroad property before the valuation department, these two terminal property, one at Brunswick and one at Port Tampa, were not included as the Atlantic Coast Line Railroad's property but they were included in the tentative report of the land of the Atlantic Land Improvement Company. In Mr. Lamb's Exhibit No. 2, the valuations, line 2, Investment in road and equipment, account 701 attributable to Florida, are the actual valuations for these years 1922 to 1931, both inclusive, applicable to the Florida figures. Yes, there has been an enhancement of value of land in Florida since the tentative report of values by the valuation department of the Interstate Commerce Commission as to the Atlantic Coast Line Railway Company. The tentative valuation of lands in Florida was increased by a stipulation made by [fol. 1654] the Bureau on the former hearing in the sum of $804,168. By stipulation, I mean the agreement between the attorneys on the trial of the case. The details had been worked up by them in a conference between the land representatives of the Bureau and land representatives of the Railroad. I mean between the Bureau of valuation of the Interstate Commerce Commission.

Cross-examination.

By Mr. Gutheim:

When I say that the value of the Atlantic Coast Line Railroad Company's properties is greater than the book value, I spoke of the same individual property in each instance, the value of the Atlantic Coast Line Railroad Company's property which I have referred to throughout this discussion, is the property that was in the company as of June, 1917, before the Bureau of valuations and since the Bureau of Valuations made that valuation there have been additions and deductions from the property on the valuation order No. 3, which the Interstate Commerce Commission issued and of which there was an accounting. I have in my answers here been referring to the 1917 inventory and then in my statement that the property was worth more now than the book value, I referred to the property as a whole as it existed in any one of these years. In proceed-

ing to determine that the property as a whole is more valuable than what it appeared to be on the books we first [fol. 1655] did this. We took the inventory that was made by the Bureau of valuations as of June 30th, 1917, although the inventory was not completed until after 1920, but was dated back to 1917 and then by the investigation which we have been carrying on for the past three or five years, we determined what would be the unit price that should be printed for this property for the late years. That is, we have been collecting data for bringing the value of the property up to date and it has been that collection of data which I have had charge of. No, we did not value the property of the Atlantic Coast Line Railroad Company, in determining the greater value of which I spoke but the uses of prices current in each of the years for which we determine the valuation. We determined first the price level. We followed the Bureau's system, which has been to determined in 1914 the price level by ascertaining what it was from studies, of the five years next preceding 1914 and for ten years next preceding 1914, what would be the proportionate net unit price. We followed the same proposition for 1925. (P. 435 of testimony.)

Q. That is to say, you had an index price accepting 1914 as 100 and determining other prices according to your own study of the price.

A. No. We made a study of the actual unit cost appearing in the six states through which we were serving. In the year 1922, the value that we had determined would be the unit price for the 1925 price level applied to 1922 and applied to 1921. Having determined the price level for 1925 we applied it to all the years, five years before and five years after 1925.

[fol. 1656] Q. What I want to make sure of is this. That you did not build up a 1917 value with your order No. 3 values to make a value in subsequent years.

A. The order No. 3 values are made by the accountant. What we did was to determine a value on July, 1917, and apply that to the 1925 unit price level and went through the exact procedure that the Bureau of Valuation did in the 1917 value. We did nothing with respect to the property, added or reduced, after 1917 because that is added under valuation order No. 3. All we have been doing is to determine what is the value to date of 1917 inventory and we have left the accountant's rules and regulations to deter-

mine what shall be the additional upon the arrival of order No. 3. We have also the date of compiling which we can apply to any year the added units because we have kept the units from 1917 up to date. That is, we know the units of grading for instance, have been developed since the inventory for 1917 was made. The prices we used for these years, 1922 to 1931 were the 1925 price level. We took those prices from the Bureau inventory of 1917. We took the 1917 basis and applied to it the 1925 price level and that gave us a comparison value as to what the Bureau reported as of June 30, 1917.

Re-direct examination.

By Mr. Alston:

Order No. 3 requires that all changes of physical property shall be rendered in units and in money either plus or minus, as the case may be. In bringing forward our [fol. 1657] valuation we have given full effect to that order No. 3. That method is directed by the Bureau.

By Mr. Turnbull:

The land values in Florida are now being brought up to date. In our hearing before the Interstate Commerce Commission which occurred in the years 1928 to 1929, we said to the Commission that there is so much furore in land values in Florida that for this hearing we will not undertake to use the present day values and the changes which were made in the land values in Florida were only those made in the stipulated ones. That is, stipulation was made during the hearing. The stipulation added $804,000 to the tentative 1917 value of Florida lands. It was finished in 1929. The land value is included in account 701 with reference to Florida. You may have misunderstood me in this, in describing the 1917 value. What I wanted to bring out was that we did not go into the same details in our values for Florida in 1917 as we did in the other states because of the turmoil that existed in land values. The general valuation was based on the 1925 valuation but the figures that were in the tentative value were the 1917 value. The valuation I testified to was based on 1925 values applied to the 1917 book of valuation of the Interstate Commerce Commission and that applied to all property of the Atlantic Coast

Line Railroad in Florida that is under that account in investment and road equipment.

By Mr. Alston:

The conference which led up to the stipulation occupied about eight months. The stipulation was signed so far as [fol. 1658] land was concerned during the progress of the hearing, which started in 1928 and ended in 1929. About $804,000 was an increase which should have been made to the 1925 valuation and which the Commission agreed to during the progress of the hearing. That had nothing whatever to do with the 1925.

Witness excused.

W. T. McCaig, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

I live in the City of Wilmington, North Carolina, and I am comptroller for the Atlantic Coast Line Railroad Company and I have been connected with that company for approximately 40 years and have been comptroller of that company since 1926. Before being comptroller my relations with the company was that of assistant comptroller. I was in that capacity for approximately four years. (P. 440 of testimony.)

It is true that the Atlantic Coast Line Railroad Company is subject to the Interstate Commerce Commission under Act of Congress, known as the Interstate Commerce Act and its amendments and also subject to the public service or Railroad Commissions of each of the states through which it operates. Those states are Virginia, North Carolina, South Carolina, Georgia, Florida and Alabama. I am the chief accounting officer of the Atlantic Coast Line Railroad Company. These accounts are kept in accordance with the rules and regulations of the Interstate Commerce Commission. That is, the accounts of the Atlantic Coast Line Railway Company. The accounts of that road

are inspected from time to time by a representative of the [fol. 1659] Interstate Commerce Commission and Bureau of Valuation of the Bureau of Accountants, by the firm of Haskin & Sells, Certified Public Accountants, of New York City. That is a well known and established firm and in good repute. They have been examining this company's books for approximately twenty years. They examine the reports of this company before the annual report is made by the company to the Interstate Commerce Commission every year. In the beginning of any transaction of freight is a document known as a waybill and that document covers the shipment from the point of origin to final destination. It lodges with the delivering carrier. If the shipment was from one point on the Atlantic Coast Line to another point on the Atlantic Coast Line, the document would lodge with the Atlantic Coast Line. If it was a shipment from a point on the Atlantic Coast Line to a point on the Pennsylvania Railroad it would lodge with the Pennsylvania. If the shipment is carried only on the Atlantic Coast Line the entire revenue would accrue to the Atlantic Coast Line. If it traveled over more than one carrier, the revenue would be divided between the carriers and the shipment there reported to those carriers by the destination or accounting carrier. The transportation as to passenger traffic is along the same line except the ticket is sold by the original carrier and charges collected by them and prorated according to each carrier handling the passenger. Briefly, that is the method in vogue with the carriers. Taking for in- [fol. 1660] stance, a shipment of freight which originates in Savannah, Georgia and is destined to a point, say Jacksonville, and both of these points are on the Atlantic Coast Line Railroad Company's lines, and suppose that the movement moves entirely over Atlantic Coast Line Railroad Company's lines the waybill would lodge in my department in Wilmington. The waybill then makes its way back to the accounting department. That would also be true of a shipment originating at Hines, Florida destined to Palatka, Florida, moving over Atlantic Coast Line Railroad and in the State of Florida. Let us suppose that the shipment originated at Palatka, Florida and is destined to Daytona, Florida, or rather taken in at Hines and destined to Daytona, the point of origin being on the Atlantic Coast Line and the point of destination being on the Florida East Coast

Railroad, both in the State of Florida, the waybill would lodge with the Florida East Coast Railroad. The Florida East Coast Railroad would account to the Atlantic Coast Line Accounting Department, apportioning the revenue between the Atlantic Coast Line and Florida East Coast, the estimated expense. They would make a report of that at the end of the month during which the transportation took place. The waybill becomes the basis of account of the transaction which originated and ended on the Atlantic Coast Line. As far as the Atlantic Coast Line is concerned the interline freight report becomes the basis of our accounting on the transaction which originated on the Atlantic Coast Line and ended on the Florida East Coast [fol. 1661] Railroad. That would be true of every freight transaction which took place entirely over the Atlantic Coast Line and which took place over part of the Atlantic Coast Line and partly over another railroad, which we call a foreign carrier. The like of that happens as to tickets for passengers except the accounting is made by the original carrier instead of the destination carrier. The same transaction covers but in case of freight, the accounting is done by the destination carrier and for tickets for passengers between originating carriers, treating waybills and reports as one. The number of freight movements which the Atlantic Coast Line Railroad Company would have in normal months during the period between February 8, 1929, and March 1931 varied according to the months, but between 300,000 and 500,00 is the entire system. Many of thees waybills are reported to us singly by foreign carriers. They range from one waybill to a report as high as twenty to a report, depending entirely upon destination. New York City waybills would average probably as many as twenty to a page and smaller towns would be as low as one to a page. Of the 500,000 items just referred to I should say 60% would be accounted for on waybills. That is, covering shipments having their destination on our lines and approximately 40% would be accounted for on interline reports through connecting lines. That approximate relationship will exist throughout each month of this period. (P. 445 of testimony.) We have one general ledger in which all transactions of the Atlantic Coast Line Railroad [fol. 1662] are entered regardless of their origin and destination. We do not keep books by state lines. These

transactions are summarized as to freight in the Auditor of Freight Receipts' office. In the passenger transactions, in the Auditor of Passenger Receipts' office and are reported to my office and recorded in the general ledger once a month. No books would be kept on them in the office of freight receipts or in the office of the Auditor of passenger receipts. They did keep reports, their statements and summaries, the general summary being that which comes to my office. As far as it is humanly possible all transactions are balanced. For instance, all interline waybills received from other carriers and reported by our agents are balanced against our reports to those of the carriers, every month. Those transactions are charged to either one of our agents of whom there are approximately 800, or to some foreign road and those balances are remitted for in cash so that it is absolutely necessary that we have correct accounts because they are entered later into either cash receipts or cash payments finally. The accounts of the Atlantic Coast Line and the accounts of its connecting carriers are checked and if any errors are detected, they are covered by notations that are subsequently adjusted.

All the transactions are adjusted currently as they occur and summarized and reported to the Interstate Commerce Commission at the close of each year. Those reports take into consideration errors that were discovered and adjusted during that current year. These accounts are kept as nearly correct as is humanly possible. I do not know of [fol. 1663] any other check or balancing upon the correctness of the account that we could reasonably make.

Objection by Mr. Adair that this is opinion testimony.

Q. Please state whether it is a fact, as far as you can make an expression of fact on such matters, that the accounts of the Atlantic Coast Line Railroad Company are correctly kept.

Same objection by Mr. Adair.

A. These accounts are correctly stated accounts to the best of my knowledge and belief. The basis of our operating expenses are payrolls and material issues and vouchers. These transactions are audited by our auditor of disbursements, summarily distributed and reported to me monthly, when they are recorded on the general ledger of the Atlantic Coast Line Railroad Company.

Suppose a train operates from Hines to Palatka. The time tickets are turned in at the end of each run, one by the engineer that covers his fireman and one by the conductor that covers himself and the balance of the train crew. Those time tickets move into what is known as the Divison Timekeepers office. Payrolls are made therefrom twice a month. These payrolls are audited in the accounting department and checks for the wages made by each man are prepared in the office of the treasurer and transmitted to the employees who made the time. In the event that we remit an incorrect amount for the employee and he makes a kick about it, corrections are made on the following payroll. It is checked up. I see whether or not [fol. 1664] it is correct. This is a form of report that is used on that run from Hines to Palatka. This one is of the first day of November 1930. This kind of report or form of reporting is uniform throughout the system. That is the standard practice for taking account of the time of employees among all railroads, It is known to the Interstate Commerce Commission and I have never heard of any objection at all. If we were dealing with expenses of maintenance of way and structure, there is a time book kept by each section master of the time made by himself and employees under his charge. These books are sent twice a month to the engineer of each division and they are checked and there is prepared therefrom a semimonthly payroll and that payroll is audited in my department, transmitted to the treasurer, from where checks are mailed to the employees making the time, whose name- appear on the payroll. If one employee makes criticism of his allowance it is allowed him in the following remittance. It is considered and if found correct allowed. That practice is a standing one among railroads. So far as I have been advised there is no objection to it from the Interstate Commerce Commission. Suppose we were taking into account expenses of maintenance and equipment. Equipment is maintained and repaired at shop point. Each employee is furnished a time card and it is recorded on that time card when he checks in in the morning and when he checks out in the afternoon and those time cards are sent to the division officer in charge of shops twice a month and from those time cards payrolls are made and these payrolls are transmitted and audited in my department and then are sent to the treasurer where checks are prepared

[fol. 1665] and mailed to the employees making the time. (P. 450 of testimony.) If one employee makes objection, it is considered and any correction is made on the following payroll. That practice is standard with all railroads. As far as I have been advised the Interstate Commerce Commission does not object to it.

Suppose we are dealing with expenses of the traffic department. There are records maintained in each office. Semi-monthly payrolls are prepared and sent to my office where they are audited and sent to the treasurer where checks are made and mailed to employees whose names appear thereon, or delivered to the employee. The expenses of the transportation department are taken into my books in the same way. The general expenses are handled in the same way. All expenses that have their origin in vouchers, such as personal injury claims, property damages, loss and damage expenses and things of that nature are not covered by payrolls.

Dealing with railway tax accruals under classification of the Interstate Commerce Commission we were required to estimate at the beginning of each year the total taxes due and payable for the account of that year and to accrue in our accounts each month one-twelfth of that total. It is the practice of all railroads and our practice to charge taxes and to credit taxes in the accrual account each month with one-twelfth of the total taxes payable and when they are paid vouchers are prepared and the vouchers distributed to the accrual account. In the event we found [fol. 1666] the taxes which we were to pay were more than the accrual we would include an extra amount in the following year to cover. If the taxes are less, we adjusted it in the following year.

Q. In these years 1922, 1926, 1927, 1928, 1929, 1930 and 1931, please state whether or not the railway tax accrual shown on line 24 of Mr. Lamb's Exhibit 1, is an approximate or fairly accurate report.

A. They approximate that figure.

Mr. Ashby objected on the ground that it is not the best evidence of the payment of taxes.

Taking the years 1926 through 1931, both inclusive, the aggregate of these accruals correctly represents the aggregate of these expenditure-.

Same objection by Mr. Ashby.

Q. Please state whether during any one of these years the actual payment was very much more or less than the accruals.

Same objection by Mr. Ashby.

A. Those amounts and reports approximate the payments. They are not actual payments but over the period of years named in there they become approximately the actual payments. It is impossible to keep the accounts, to correctly estimate at any time during the year what your actual taxes for the year are to be. Income taxes, for instance, must be accrued and it is impossible for the corporation to state before the close of the year, with any accuracy, just what that income tax *is* for that year is going to be, you never know until you strike a balance of what your income taxes are going to be. There is that element of uncertainty that makes it impossible to accrue [fol. 1667] on an actual basis. We charge uncollectible railway revenue to an account provided for by the Interstate Commerce Commission after having exhausted our legal remedies to collect it. These amounts are small and insignificant. These accounts as shown on our books for the years 1922, 1926, 1927, 1928, 1929, 1930 and 1931 are accurate.

Objection by Mr. Ashby:

These are actual figures. They are found to be uncollectible in these years and charged to that uncollectible revenue account as provided for in the classification. This account, Hire of Equipment, shown on Line 27 of Mr. Lamb's Exhibit No. 1, as Hire of Equipment, net balance. Those accounts, represent rents received by us from other carriers for use of our equipment such as locomotives, freight and passenger cars, etc., and rent paid by us for the use of similar equipment owned by other carriers, the amount shown on this exhibit being the net between the two.

The accounting process is based upon reports derived from our employees for each 24 hour period showing cars on line of road. That includes our own equipment and that of other railroads. Similar reports are rendered by employees of other railroads and from these reports there is recorded in car record book the movement of individual

cars during the 31 days of the month. At the end of each month from these records there appears interlined reports which are exchanged by carriers. All of the cars of Atlantic Coast Line Railroad ownership that were used during that month on foreign roads are reported to us and all of the foreign road cars used by us are reported to them. The charge allowed each one is based upon reciprocal rental rates. These reports are summarized by the superintendent of car service and reported to my office where I charge foreign roads with car rental due the Atlantic Coast Line Railroad and credit foreign roads with what is due them and the net of these two I charge to Hire of Equipment Account as required by the Interstate Commerce Commission.

[fol. 1668] That is the standard practice. Our Car Accountant's office is in Wilmington. His records are in his office and in the record room building immediately adjoining it. That is about 200 feet from this office, just across the street over there. The way bills and the reports from other Roads which I have heretofore described, showing the gross revenue of the Atlantic Coast Line Railroad Company during the period from February, 1929, through March, 1931, are kept in the office of our Auditor of Freight Receipts and in the record room building immediately adjoining it, just across the street from where this hearing is being held. Those way bills and the records covering the periods I have mentioned are contained in a building approximately 100 feet long by 50 feet wide and 6 stories high. (Tes. p. 455.) Yes, the building contains some other things besides the records during these years; that is where these reports are maintained. I can say for those years it would take at least three stories of this building for freight, passenger and car records, and all records for the operation of the Railroad.

I have the books showing total operating expenses, expenses of maintenance of way and structure and maintenance of equipment, traffic transportation, general expenses, and all other expenses, and railway tax accruals, uncollectible railway revenues, hire of equipment, joint facility, and rent before me. These three books before me are the general ledgers of the Atlantic Coast Line Railroad Company. They are numbered 8, 10 and 11. It is true that these general ledgers represent the final summaries of the accounts.

[fol. 1669] The books and records leading up to these final summaries including the freight bills referred to are in the office of the Auditor of Freight Receipts, Auditor of Passenger Receipts and Disbursements, and in the record room immediately adjoining the office across the street from where this hearing is being held. We have journals that go with these books; they are here. The three books I have referred to as general ledgers are about 15 by 24 inches, I imagine. They have approximately 650 pages each. (Measuring by ruler.) They are 14 by 20 inches. I have before me the books that I call the journals. They cover the same period of time. There are seven books. One of these books is a bound book covering a period from September, 1929, to December, 1932. This book is approximately 20 inches by 16 inches. The other six books are what is known in accounting circles as loose-leaf journal entries. The journal entries that are bound together in book form are so bound as a labor-saving device, a practice that is common among all carriers of this kind, and represent our journals for the years 1926, 1927, 1928, 1929, 1930 and 1931. They are prepared from summaries of freight records, ticket records, car service records, material issues, bills collectible records, vouchers payable records. They are called basic records. The Atlantic Coast Line Railroad Company gets the figures which it submits to the Interstate Commerce Commission in its annual reports and the figures it gets for submission to the Commission of the several States through which it operates from the books I have just described. The books I have before me, the ledgers and the journals, the way bills and the other records and data which I have described, from which the revenue and expenses of the Atlantic Coast Line Railroad are ascertained, and from which the value of this property is ascertained, [fol. 1670] are open to inspection by the Court and by our opponents in this case. The figures representing investment in road equipment, Account 701, and representing materials and supplies, Account 716, and Cash, Account 708, are gotten from the books before me. The testimony which I have given as to the correctness of the other accounts is applicable to these accounts as well.

The organization constituting the accounting department of the Atlantic Coast Line Railroad is made up of the Comptroller, who has charge of the general books, and who renders all reports to the Interstate Commerce Commis-

sion and to the State Commissions, and to the stockholders; the general Auditor, Mr. Lamb, who assists him in matters of this kind; an Auditor of Freight Receipts, who has entire charge of all freight transactions handled by the Company; an Auditor of Passenger Receipts, who has charge of all passenger traffic handled by the Company; an Auditor of Miscellaneous Accounts, who has charge of all miscellaneous accounting in connection with the Company; an Auditor of Station Accounts, who maintains an account for each of these 800 agents; and Auditor of Disbursements, who audits all payrolls, material issues, vouchers, bills, etc.; an Auditor of Construction, who has charge of all capital expenditures and renders valuation reports to the Interstate Commerce Commission under Valuation Order #3. All of these organizations report to me as Chief Accounting Officer for the Company. Approximately 425 clerks are employed in the whole department at the present time. The heads of each one of these offices are men who have been in the service many years and who have proved their worth in the positions they have held. I mean their worth for accuracy and integrity. The Chief Clerks serving under department heads are men who have been in the service for a number of years, and who have been pro- [fol. 1671] moted from minor positions by reason of their skill and ability, displayed by them in such minor positions. The clerks are graded according to their experience and ability. The minor duties being devolved upon those of less experience, and of shorter period of service in our Company. To the best of my knowledge and belief the organization is an efficient and honest one. That was true during the entire time under inquiry from February, 1929, through March, 1931.

Cross-examination.

By Mr. Ashby:

My general bookkeeper made the entries in these books, all of the entries in the ledgers. The general bookkeeper does not prepare all of the accounts; they are prepared by the different auditing offices where the (Tes. p. 461) figures are summarized and come to us, and are run from the accounts into the ledger. It is true that a summary is sent in from which this account is prepared. However, the journal itself is a summary and this journal is prepared by each one

of the Auditors and comes to my office, where it is placed in the ledger, bound in book form and recorded in the ledger. We have the Auditor to prepare this journal, which is a summary and journal, a combined summary and journal. The Auditor gets the information upon which he prepares this journal from these records which I have just described. He gets the way bills from our local agent and he gets the reports from foreign roads, and they are checked and audited and summarized on these sheets here, and from those sheets they are recorded in the ledger. When I say they are checked and summarized I mean audited, to see whether they are correct. For instance if an agent forwards a section of his statement and makes a way [fol. 1672] bill for it in advance, he then reports that to our Auditor. It is the duty of our Auditor to see that some agent of our Company, or some foreign Road, gives him a report of that way bill and renders an accounting of the revenue appearing thereon. Those returns are checked against the record of the way bill issued by our agents and they are verified against the tariff to see that the lawful charges are assessed thereon, and that work is all done in our Freight Auditor's office.

By Mr. Gutheim:

All the underlying and supporting data, that are the bases of these various documents, the journal data, they are of record in my office or in my sudordinate's office here in Wilmington, and the data is all available. The original accounting records covering freight revenue are available here in Wilmington, on the system I have described. The way bills having destination on other Railroads are not available in Wilmington, but the records from the other Railroads to my department are available. These are the interline reports which I have referred to; the same is true also of tickets. A ticket sold by one of our agents to a point beyond our line, part of that ticket will be in our possession and part in the foreign line's possession; but the ticket report will be here in Wilmington, and is here in Wilmington. All original payrolls, all material issues and all vouchers covering expenditures paid in Wilmington are available for inspection. The time books from which these payrolls are prepared are in the three Division offices; the original payrolls, together with the receipts

from the men who received the money are in Wilmington. Some of the interline data, for instance the time slips from [fol. 1673] which the payrolls are prepared, do not come to Wilmington. With respect to material and supply slips, that is true as to the original requisition itself, but those requisitions, however, are all summarized and reported to headquarters in Wilmington. The original requisition itself is not on file here in Wilmington, but a summary of all those requisitions, which an account is based upon, is here. All original accounting reports are in Wilmington. It is true that as to our revenue we have an original document in Wilmington, whether a way bill or interline account, that shows exactly as to each shipment on record, as to just how our revenue accrued. When it comes to operating expenses our payrolls may be here, but the time slips are not here, but they are back in the Division office. And the same is true as to our requisitions and receipts for material and supplies which will be back in our Division office, but we will have a summary of them here. We consider the original payrolls and the statement of material issues as the original accounting documents, and they are on file in Wilmington. If I were asked to make a statement showing out-of-pocket expenses for moving logs from Hines to Palatka in one given month I could not do that entirely in Wilmington from the records that I have here available.

By Mr. Turnbull:

With respect to item 24, Railway Tax Accruals, which Mr. Lamb has identified on his exhibit #2, If I didn't pay the tax accruals in any one year I could straighten that out in this manner: If I accrued too much I would credit tax accruals in the following year, so as to adjust my account. If I accrued too little I would accrue some more next year to make it up.

"Q. Well, he has tax accruals here for the year 1930 as $2,051,985.00. Did the Atlantic Coast Line Railway actually pay this?"

[fol. 1674] "A. You are speaking now of tax accruals of the State of Florida?"

"Q. Yes."

"A. That is the amount I accrued for account of the year 1930. The taxes which were not due until April of the year

1931 might have been slightly in excess of that, or in excess of that now."

"Q. Well, which was it?"

"A. If you will let me confer for fifteen or twenty minutes I will give you accurate information. I have that available and will answer your question in a few minutes."

"Q. Is it not in the books?"

"A. Yes, sir."

"Q. Didn't you state we could get all the information we wanted out of the books?"

"A. Yes, sir; you can get them out of these books."

"Q. That is what I am asking you to get, out of these books."

"A. The tax accruals account appearing on this ledger that I have before me, includes tax accruals account for all States, and for account of the United States Government, property taxes and income taxes. Various records in this tax accruals account are the various items made to the six States through which we operate and to the Federal Government. These payments are made by our Treasurer and are summarized on his cash book, and posted from that cash book to this tax accruals account."

It is true that while the ledger account reflects the payment of all taxes, it does not reflect it in detail. We have records which do reflect and show the taxes actually paid in [fol. 1675] cash in any one year to any one State; those records, the Treasurer's cash book shows the payments made by him. (Tes. p. 465.) That information can be obtained from the 14 books I have offered here on the System as a whole, not for the State of Florida itself. We do not keep a separate set of books for each State we operate through. We keep a general ledger for the whole. When I was testifying from Mr. Lamb's exhibit #2, Property Investment, I was testifying as to the System as a whole and not of any individual State. The cash books of the Treasurer are in the building in which we are now sitting, and in the Treasurer's office. They are available. They are subject to the inspection of the Court and of our opponents. The figures shown on Mr. Lamb's exhibit #2 includes taxes paid for the State of Florida and all political subdivisions thereof, and also includes the proportionate part of the United States Federal Income tax payments assigned for the State of Florida. The information con-

cerning how much of that tax had actually been paid to the State of Florida and the amount of Railway Tax Accruals for Florida for the year 1930 can be found in or obtained from the ledger and journal before me as well as from this Memoranda book that I now have. This Memoranda book to which I refer is a memoranda showing the details of tax accruals on account of each political subdivision and payments made each year. It is kept in my office in the building across the street. This book I now offer is in addition to the original books that I testified from in my direct testimony. Those original books were purchased for the inspection of the Court and claimants here originally, the ones from which I testified.

There was paid to the State of Florida in the year 1931 for the year 1930, the amount of $1,762,456.75, I mean to all [fol. 1676] of its subdivisions and government. I did not include in that any proportion of income tax which the Atlantic Coast Line Railway Company paid for the year 1930 to the United States Government. Let me correct that figure, as there were certain figures not included. The total tax payment accruing for the year 1930 paid during the year 1930-1931 was $1,837,002.47. I am testifying from the memorandum records of the tax accruals and the taxes paid maintained in my office, taxes paid and accrued for the year 1930-1931, and 1931-1932. If I had brought into Florida on a revenue basis the proportion of the taxes and also our income taxes paid to the Government that would have increased that sum. This sum was paid during the year 1930-1931 for the account of the year 1930. The Atlantic Coast Line Railroad paid a small part of its taxes for the year 1930 in 1930. The major portion, I think, was paid in 1931. Any taxes we might have paid in the early part of 1930 would have been for 1929, but there are certain license taxes payable during the calendar year.

Mr. Lamb's Exhibit #2 shows that for 1929 Railway Tax Accruals were $2,317,632.38. We have paid the State of Florida for taxes applying for the year 1929 the amount of $1,939,696.18. A part of it was paid in the year 1929 and part in the year 1930, but all of it for the account of the year 1929. I am now testifying from memorandum record of taxes accruing and paid to political subdivisions as maintained in my office, sub-record of (Tes. p. 470) the ledger. Those original entries were made from vouchers issued in favor of these political subdivisions for taxes. The tax

[fol. 1677] collectors of the various sub-divisions issued tax receipts to us. They are available. If for any reason the tax receipt is not available, paid and cancelled check is available. We do keep all of our tax receipts, but occasionally they refuse to send it back to us. The sheriffs and others are sometimes careless about those things. We try to get them back, but sometimes don't succeed. I will undertake to produce the tax receipts for the year 1929 showing the payments, also showing the payment of all the taxes in Florida for the year 1929 to the various political subdivisions and to the States, if you will give me a little time. They are all available. This is a big concern you are dealing with now, and many records have to be maintained. I will be very glad to furnish those original paid receipts sometime during tomorrow, and the year 1929, I understand, is what you want.

We don't keep accounts for separate States through which we operate, we keep accounts for the System as a whole. Operating accounts for the years in question for the Atlantic Coast Line Railroad are recorded in these general ledgers that I have before me at the present time. In addition to the Atlantic Coast Line Railroad property, we lease certain other properties, such as the Tampa Southern Railway and the Fort Meyer and Southern Railroad. These investment accounts are not reflected in this ledger, but they are reflected in these other accounts that are also available for inspection, and we will have them here in a few minutes. However, the operating results for the System as a whole are recorded in here. The entire investment account is not recorded in here. In pro-rating the property investments and operating income account of the State of Florida, the valuation that we report to the Railroad Commission in the State of Florida and as used by Mr. Lamb was the tentative valuation placed on our property in Florida by the Inter-[fol. 1678] state Commerce Commission as of June 30, 1917, plus additions and betterments made to the property during the period of the years since then, minus retirements of that property since then. We have not been required by the Interstate Commerce Commission up to date to record that valuation in our ledger. What is recorded in our records is investment in road and equipment accounts. I will say however, that the additions to the property investment account and the retirements of property

investment account, subsequent to June 30, 1917, are recorded in the ledgers that are before you. The Investment in Roads and equipment Account, in Account 701, is not segregated in these books for the State of Florida. I would rather that Mr. Lamb testify how to check up Mr. Lamb's exhibit # 2 that he has filed here, with reference to the property investment and operating income for the State of Florida, from the book I have offered here for inspection before us. I can testify that these are the original records of the Company; that Mr. Lamb took these original records and apportioned certain investments and material and supplies and cash to the State of Florida. I prefer he testify as to the process he used in doing so. I keep the books of the System as a whole, and these books are before you. Yes, they are offered to you for inspection to check up on the exhibits made by the witness of the Atlantic Coast Line Railroad. I can check Mr. Lamb's exhibit # 2 from the books I offer for inspection if Mr. Lamb told me the exact process he used, without any difficulty at all. Yes, from the records which I have tendered to the Court and our opponents, I can apply a formula for the ascertainment of the amounts of supplies, material and other like things to be charged to Florida. I am sure that Mr. Lamb would tender you any record he has in Wilmington, and explain any exhibit he has made. I suggest that, as he has introduced the exhibit, he would be the proper [fol. 1679] man to testify to it. However, if you want me to go into it, I will do the best I can from somebody else's work. With Mr. Lamb's explanation that I understand is in the record, the formula that he used in this in arriving at these figures, this exhibit could be checked for this purpose from the books. I wouldn't say it is an arbitrary formula. I might say it is almost an actual scientific formula. For instance, in glancing over this exhibit it seems to me that he used the track mileage formula in obtaining the material and supply account between the different States. We have a record of the track mileage in each State, and you take that percentage for this material and supply balance here, and you will arrive at Mr. Lamb's figures. There wouldn't be any difficulty about it. Yes, I am testifying with reference to material and supplies (Tes., p. 475). The figure, material and supply accounts, 716, of $2,573,857.03, would appear in the ledger and not in the journal. The figure for

the system as a whole would appear in these books, but I cannot point out that specific figure to you. I have repeatedly stated that we do not keep books by State lines. We don't record track mileage, but it is a matter of record, and that record is available here in Wilmington. That is reported to the Florida Railway Commission and the Interstate Commerce Commission. Then the balance is a matter of calculation.

Redirect examination.

By Mr. Alston:

There are three Division offices of the Atlantic Coast Line Railroad Company. They are at Rocky Mount, North Carolina, Savannah, Georgia, and Jacksonville, Florida. The time records for the Third Division are kept in Jacksonville. The boundaries of the Third Division lie entirely within the State of Florida. Those are the proper places for these records. In lieu of having the time reports here, you have the report of the time keeper for that Division on which the payments of time are made, and we have the receipted payments of the checks. These are in Wilming-
[fol. 1680] ton. Insofar as those time reports may be desired for checking, I am willing to assemble them for the use of the Court or our opponents in Wilmington. Track mileage division for distribution is fair to Florida in the distribution of materials and supplies.

(Objection by Mr. Ashby that is it an opinion.)

The sum of $1,939,698.18, which was expended by the Atlantic Coast Line Railroad for taxes in Florida, does not include any part of the income tax paid by the Atlantic Coast Line to the United States Government. In my opinion, based upon my experience and my connection with the Atlantic Coast Line, it was proper to charge the State of Florida with a part of the income tax paid to the United States Government by the Atlantic Coast Line Railroad Company because part of the income was earned in the State of Florida. You could not correctly state the operating cost applicable to any State without assigning to that State a proportionate part of the income tax paid to the Federal Government. If we left off any State it would

be an overcharge on some other state. I find upon examining my records here that there was paid on account of the year 1929 in the State of Florida, in the year 1931, the additional taxes of $99,885.05, which I failed to take into consideration in testifying a few minutes ago, which makes the gross payment to the state of Florida on account of the year 1929, $2,039,593.23. This deduction from the amount shown on Exhibit # 2 by Mr. Lamb leaves a tax chargeable to the State of Florida of $278,039.15, and the Florida proportion on the United States income tax paid for the account of the year 1929 would be approximately $204,000.00, which would leave an over-accrual of taxes for the State of Florida for the year 1929 of $44,267.99. That remained to the credit of the Tax Accrual Account and was applied [fol. 1681] to the Florida taxes for the subsequent year. All books, records, books of accounts, and records, material to any other accounting and calculation, and figures and tabulations, offered or which may be offered in the record of this case, or which may be necessary or desired to ascertain the correct accounting of the Atlantic Coast Line Railroad as to investments, revenue, expenditures, tax accruals, hire of equipment, joint facility, or rents are available and open to inspection of the Court and of our opponents. (Tes., p. 480.)

Recross examination.

By Mr. Turnbull:

We maintained no record charging to any State a proportionate part of the Federal income tax. When I testified about the Florida part of the income tax that was a mere matter of calculation and one which we make when we enter a case of this kind. In this case we have undertaken to show the revenue, expenses, equipment, rent, taxes, applicable to the State of Florida. In doing so we have assigned in this study a proportionate part of the Federeal Income taxes paid for the account of the years in question, and in doing so we have used a formula whereby we divide this tax between the several States which we operate through in accordance with a proportion of revenue earned in each state, considering that to be a fair method of apportioning. These apportionments are not a matter of record and in the books for the reasons, as I have stated

before, that we do not keep books by State lines. We keep one set of books for the entire operation of this Company. That part of the income tax that I testified was assigned to Florida of $233,771.16, was just an assessment that I made for the benefit of this case, on the basis stated. That particular figure would not be found in any [fol. 1682] of my records. It would be found in Mr. Lamb's exhibits and testimony. We have the total income tax that was paid, and have assigned to Florida a certain amount based on the revenue earned in Florida as compared with the System as a whole, earned on the whole. The revenue earned in the several States is not segregated in either of these books. The taxes paid by the Atlantic Coast Line Railroad Company to the Federal Government for account of the year 1929, was $821,357.54. I might add that our accounts have been examined by inspectors of the Income Tax Bureau, and that additional assessments have been made against us for the account of that year, which are now pending before the Income Tax Bureau in Washington. The present indications are that we have under-accrued our Federal Income taxes for that year. Opening this Atlantic Coast Line Railroad's journal for 1926, there is account # 166, American Railway Express Company, for express revenue, and there is a debit charge of $331,276.34, and a credit to Express revenue of $331,076.34. I compiled those journal entries from the report of the Railway Express Agency that was given to me covering the operations for that month. That journal entry was made from the original report rendered to me by the American Railway Express Company at that time, the American Railway Express Agency. It would consist of all the express matter handled over the Atlantic Coast Line Railroad Company during that month. This is a compilation of the record of the American Railway Express Company and subdivided to the carriers over whose line the traffic was handled, and the Atlantic Coast Line's proportion thereof was reported to me. Our Auditor of Miscellaneous Accounts prepared that general entry from the American Railway Express Company's report. That is not the original report of the Express Company; that report is available, [fol. 1683] however. Account 164, Dining Car, Steward's account, Dining Buffet revenue, appearing on account 164, that entry is summarized from a report of dining car op-

erations for that month, taken from the records of stewards of the dining cars, statements of issues to the dining cars, and payrolls of the dining car employees, etc. (Tes., p. 485.) The original records of the dining cars are available. In order to check up these various journal entries from the original data, from which is was compiled, you would have to check that original data.

Redirect examination.

By Mr. Alston:

Neither the Interstate Commerce Commission nor the State Railroad Commissions of the several States through which we operate, have ever prescribed any method by which carriers are required to divide their revenue between the States. We are, however, required by each of the Railroad Commissions, or we are required by the Railroad Commission of the several States through which we operate to render a yearly report of the operations in those states. In order to comply with these requirements the Atlantic Coast Line Railroad Company divides its revenue in this manner: The shipment having both origin and destination in the State, that State is credited with 100% of the revenue on such shipment. A shipment moving partly in one State and partly in another, the revenue therefrom is divided according to the miles traveled by such shipment in each State. The same practice is observed in segregating passenger revenue between states. Miscellaneous [fol. 1684] items of revenue, such as demurrage, storage, etc., is allocated to the State in which it is earned. Operating expenses for the System as a whole are divided between the several States through which the Atlantic Coast Line Railroad Company operates on a basis of revenue, it being assumed that it costs as much to earn a dollar of revenue in one State as it does in another. By revenue, I mean gross receipts for transporting business as divided between the States in the manner I have just described. Taxes are assigned to States on a basis of accruals and payments as I have previously described. Equipment and rents are divided between the States according to the mileage hauled of each class of equipment in the several States. Uncollectible revenue is assigned on an actual basis to the State in which it is earned. Joint facility rents are as-

signed on a basis of location of property on which the rent is paid. A shipment moving from one point in the State of Florida to another point in the State of Florida, but not passing out of the State, all of that revenue is attributable solely to the State of Florida. That allocation is taken from the waybills themselves. It is true that where they are partly in Florida and partly out of Florida, the allocation is also based on the waybills but upon a mileage basis. That method has never been disapproved by any State Commission or the Interstate Commerce Commission that I have knowledge of. It is a practice with a majority of the carriers. Some of the carriers have a shorter method of doing it, but we believe it to be an accurate practice and a practical method of making this separation we are required to make in order to render these yearly reports to the various Commissions. I believe it to be a fair method. It is accepted by the State Commissions with which the Atlantic Coast Line does business.

About the taxes for 1929, the Government has made an additional assessment. It is now in contest before the [fol. 1685] Board in Washington, before the Board of Tax Appeals. If any of that additional assessment is maintained against the Atlantic Coast Line Railroad, that will mean that an additional sum should have been attributable to Florida on that account for that year. And to the extent that there is such additional amount charged and credited, that would reduce what I call the extra accruals in some $44,000.00. It is true that the taxes attributable to Florida are not yet finally settled.

(Witness excused.)

W. Moore Warren, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

I live at Wilmington, North Carolina, and am employed by the Atlantic Coast Line Railroad Company as rate clerk in the Freight Traffic Department, in which capacity I have served for over two years and for nearly three years. I assisted Mr. Perrin in the preparation of the exhibits which

he introduced in this case. Mr. Perrin filed 22 exhibits, of which I prepared all of them except Nos. 1, 3, 4, 5, 6, 8, and 9. In other words, I prepared those which, generally speaking, refer to I. C. C. reports rather than to tariffs. I have checked this exhibit #1 against the original tariff. In other words, just as if I had prepared it myself. That is a correct exhibit, that is, with certain traffic changes on certain pages. It does not affect the rates. On page 2 there are certain tariff references. There are certain tariffs shown there that were not actually in effect. That is, the tariffs themselves were not actually in effect on June 3, 1931. Those tariffs have been suspended by all issues which were on file. I have copies of all the issues. That [fol. 1686] has no effect on the figures on page 1 there in comparison. Yes, I have the tariffs correctly numbered and copied there. (Tes. p. 490.) Exhibit #2, I am quite sure I prepared it. I am not positive, but I have checked it and found it correct. I checked it first against the reports, or rather the orders of the State Commissions, by which these rates were prescribed, and secondly, against the actual published tariffs, which carry the rates to-day. It is correct. I have checked exhibit #3. I checked that against the Class "P" rates as prescribed by the Florida Commission years ago, as brought up to date by the general expansion and the 10% reduction for 1922. I also checked it against the Tariff carrying the rate to-day, the one that actually publishes those rates to-day, and it is correct. Exhibit #4 has been checked by me, and it is correct. I checked that against a certified copy of the Florida Commission's Order prescribing these rates for application over the Seaboard Air Line Road in Florida and also the tariffs which carry these rates. I have checked Exhibit #5 against the tariffs that cover these rates. It is correct. I have checked Exhibits #7 and #8. They are correct with this reservation as to #8. The scale of rates shown there for cement goes up to and including 300 miles, and that scale is not actually carried in tariff form except as for a distance up to 130 miles, and for distances beyond that it is the same as prescribed in I. C. C. Docket 15806, and it is carried in entire form in the peculiar manner known to tariff men in this way: For distances beyond 130 miles, there is a section in the tariff that provides for application for rate basic numbers, which are known to traffic men as distances and in practice is the same, but

the actual tariff provision is not there. On that basis those figures are correct. It is true that that is the correct basis [fol. 1687] for ascertainment of that rate.

A layman in examining that particular tariff could not know the rate of that tariff as for 200 miles I would say, but with this idea in mind. One of these later exhibits compares cement also, the cement scale as contemplated in I. C. C. Docket 15806, and this scale here in Exhibit A checks identically with them all. A tariff expert would have carried forward the same rates for those distances which are here. The rates shown here are point to point rates and are based on this mileage scale for that distance. If you were to get any distance for the cement tariff for 200 miles you would get the same rate as you have here, as the same rate would apply. This particular tariff does not name the particular rate above 130 miles as a mileage scale, but it does name it under a rate basis number, which are similar distances. To get the rate basis number you have to refer to the Docket 13494 tariffs, which give the basic numbers and then by the use of the rate basis numbers you add to this scale here for any given distance. The fixed tariff authorizes you to do that.

I have not checked Exhibit #9; that is an exhibit that was offered by Mr. Perrin, and I was not instructed to do anything as to that. I understand it is an accounting proposition. I have checked exhibit #10; I prepared that myself and it is correct. I prepared that from the original I. C. C. Reports, which are referred to in the exhibit with the scales brought up to date, that is, the Chattanooga scale shown here, which was prescribed back prior to 1918, and in preparing this exhibit those rates were brought up to date in accordance with the general advancement and the 10% reduction. Exhibit #11 has been checked, and it is correct. I made #12, and it is correct. I prepared Exhibit [fol. 1688] #13, and *and* it is correct. I prepared Exhibit #14 from the records referred to, and it is correct. I made Exhibit #15, and it is correct. I made Exhibit #16 and it is correct. I made Exhibit #17, and that is correct. I prepared Exhibit #18 originally, (Tes. p. 495) and that is correct. I made Exhibit #19, and that is correct. I made Exhibit #20, and it is correct. I made Exhibit #21, and it is correct. I made Exhibit #22, and it is correct.

I have a series of copies purporting to be certified by the Secretary of the Interstate Commerce Commission on

the 27th day of May, 1932, consisting of 14 typewritten sheets and 13 photostatic sheets. Those 35 copies relate primarily to Mr. Perrin's exhibit #1. There are several tariffs involved, and those tariffs are named and contained under this Seal, in the order in which they are carried in Mr. Perrin's Exhibit #1, for instance column D, headed St. L. & S. F. Railway, Net Transit, there follows figures showing the rates, etc. That exhibit shows the tariff authorized for that column. The next column is headed "Illinois Central Railroad," one column including the Local and the other the Net Transit. The authorities cover that. I might say that those rates were arrived at on this exhibit by ascertining the distance from these points to Memphis, the point of destination, and they are supported by the extracts which I have here. The columns E and F, headed "Mobile & Ohio Railroad," one being Local and the other Net Transit, the traffic authorities support those figures. I should like to mention there, however, that the extracts which I have here reproduce Class N rates and Class O rates, both of which apply on logs, and, of course, the lower of the two, they both being in the same tariff, would apply, and the lower of the two is what is shown on column E of Mr. Perrin's exhibit #1. That is the local rate. My tariff [fol. 1689] authorities cover columns G and H, headed, "Gulf, Mobile & Northern Railroad," one column headed "Local" and one "Re-shipping Rates," with the same reservation on the Gulf, Mobile & Northern Railroad for which Class O and Class N rates apply, and the lower of the two rates would be applied. Yes, that is the one used. Column I, headed "Atlantic Coast Line Railroad," Local, my authorities cover that; that is the so-called Interstate State Rate. My authorities cover column J, headed "Southern Railway, Local." I have authorities covering the rates in column K, "C., C. & O. Railroad." I should say, however, that column K is described on page 2 as applying between points on the Clinchfield Railroad and Erwin, Fordtown, Gray, Johnson City, and/or Kingsport, Tennessee. Now, prior to the original, or rather subsequent to the preparation of Mr. Perrin's exhibit #1, those rates have been cancelled, except to Johnson City and Kingsport, and those rates were in effect and carried authority for this column. My authorities cover column L, headed "N. C. & St. L. Railway." My tariff authorities cover columns M and N,

headed "Louisville & Nashville Railroad," one column Local and the other Net Transit. I should say as to column M, carrying the local rate, that those rates are also point to point commodity rates, and we arrived at it by ascertaining the distances from representative points to Decatur, Alabama, the point of destination there, and we then show them here as mileage rates. My authorities cover column O, headed "Seaboard Air Line Railway." I have checked these rates against each of these authorities. I offer this document as Warren Exhibit #1.

(Objection by Mr. Ashby; same objection made to Mr. Perrin's exhibits in the first instance.)

I offer another tariff extract which refers to exhibit #1 and exhibit #5, exhibit #6, and exhibit #8 which were filed by Mr. Perrin.

(Same objection by Mr. Ashby.)

[fol. 1690] My next exhibit refers to Perrin's exhibit #2. I have first the certified copy, certified to by each of the State Commissioners named at the top of this paper; I mean Virginia, North Carolina, South Carolina, Georgia and Alabama, indicating that these rates were prescribed by those Commissions. (Tes. p. 500.) This should be marked Warren Exhibit #3. In addition to that I also have certified copies of the portions of the tariffs that carry these rates to-day. I should explain, however, that the tariff extracts covering the rates intrastate in Virginia and Alabama are included in my exhibit #1, which I have previously filed, and all the other extracts are included in this exhibit. No, they do not show a difference in the rates now as compared with then; those extracts there are the same as the rates shown here. The extract tariff carrying the rates, the effect of intrastate rates in Virginia, is shown under my exhibit #1, also as to the Alabama rates, and the rates for North Carolina, South Carolina and Georgia are included under the Seal, which you now have. That should be exhibit #4. It does not differ in any way from that I have already put in; it is just additional tariff excerpts to sustain the rates shown on exhibit #2.

I have a copy of the petition to the Commission which is referred to in that order of September 6, 1930, my Exhibit No. 3, which I offer as Warren Exhibit #5. It is not a certified copy. It is signed by our Mr. R. J. Doss. I know

that it is a copy of the original. Yes, it sets out the rate, in exhibit #1 to the application to the Virginia Commission.

The next exhibit relates to Mr. Perrin's exhibit #3, and compares the Cummer scale with Class "P" rates in [fol. 1691] Florida. Now as to that I have here the tariff extract, which show those Class "P" rates in effect to-day, and I also have the certified copy from the Railroad Commission of Florida, Order #431, dated February 16, 1914, dealing with the revision of Class "P" rates in the State of Florida, and I offer that as exhibit #6. I should say that those Class "P" rates were prescribed by the Florida Commission prior to the general advance and 10% reduction, and that is brought up to date and reflected in tariff extracts, tariff extracts in Exhibit #6 typed on my page #3. Those brought up to date are the rates shown in another portion of my exhibit #6. My next exhibit is #7, which refers to Mr. Perrin's exhibit #4. In support of that exhibit I have here a certified copy from the Florida Railroad Commission, Order #536, dated December 16, 1916, dealing with the matter of rates on logs between stations on the Seaboard Air Line Railway in Florida, and also certified copies, separate portions of the tariff, that contain those rates to date. Those rate are in effect to-day and have been in effect except for the general increases and the 10% reduction. I also offer as Warren exhibit #8 a certified copy of the Secretary of the Interstate Commerce Commission, consisting of three typewritten sheets, and extracts from certain tariffs of the Seaboard Air Line Railway, Florida local tariff #9, I. C. C. #A-7298. My next exhibit is #9, and it relates to Mr. Perrin's exhibit #5, and contains tariff extracts certified by the Secretary of the Interstate Commerce Commission for all the rates referred to in Mr. Perrin's exhibit #5, excepting, of course, the so-called Cummer scale. This paper, being a certified copy by the Railroad Commission of Florida, as an extract copy of Order #431, dated February 16, 1914, and marked Warren Exhibit #6-A, is a certified copy of Order #431, dated February 16, 1914, by the Railroad [fol. 1692] Commission of Florida, prescribing Class "P" rates for application intrastate in Florida.

Now I offer as Warren Exhibit #9 a certified copy of eight typewritten sheets and two photostatic papers; this

exhibit relates to Mr. Perrin's exhibit #5. My next exhibit, #10, relates to Mr. Perrin's exhibit #6, and contains tariff extracts certified to by the Interstate Commerce Commission of all the rates carried by Mr. Perrin's exhibit #6, except the so-called Cummer scale. My exhibit #11 relates to Perrin's exhibit #8 and carries tariff extracts certified to by the Interstate Commerce Commission of all the rates referred to in Perrin's exhibit #8, except the so-called Cummer scale, and except the rates on cement, for instance, for distances in excess of 130 miles, which I have previously referred to. The figures on cement in excess of 130 miles are correct on exhibit #8. They form the basis for the point to point movement, rates on cement, for the mileages given. I file this as Warren exhibit #11. My next exhibit is #12, and refers to both exhibit #10 and exhibit #11 filed by Mr. Perrin at the previous hearing. It contains certified copies of the I. C. C. Report, Docket #9560, I. & S. Docket #256. These reports are the basis of the rates shown under the Chattanooga scale in Mr. Perrin's exhibit #10, and the first column of figures in Mr. Perrin's exhibit #11. I offer this as Warren Exhibit #12.

I offer as exhibit #13, certain certified copies from the Interstate Commerce Commission reports, which relate to Mr. Perrin's exhibit #10, also his exhibits Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21 and 22. This is offered as Warren Exhibit #13. Certain of the rates contained in Mr. Perrin's exhibits were prescribed prior to the general advances (Tes. p. 505) and ten per cent reduction of July 1, 1922, and support an authority for those advances, and that reduction. I have here exhibit #14, which is a certified [fol. 1693] copy of General Order #28, issued by the U. S. Railroad Administration under date of May 25, 1918. I tender this as Warren Exhibit #14. My Exhibit #15 is a supplement to General Order 28, also certified by the United States Railroad Administration, under date of June 12, 1918. This is offered as Warren Exhibit #15. My exhibit #16 consists of certified copies from the reports of the Interstate Commerce Commission issued in Ex Parte 74, and I. C. C. Docket 13293. This exhibit forms the authority for the general advance made August 26, 1920 and the 10% reduction in 1922. My exhibit #17 is a certified copy by the Secretary of the Interstate Commerce Commission of certain portions of Agent J. H. Glenn's

I. C. C. A.-531, which was prepared to show I. & S. 2479 Scale as contained in Mr. Perrin's exhibit #11, 2479 Lumber scale. I tender this as Warren exhibit #17. I offer as my exhibit #18, certified copies from the Interstate Commerce Commission's reports and orders contained in I. C. C. Docket 13494 and 15879. I have now produced the tariff authority or a Commission authority for each of the exhibits which were introduced by Mr. Perrin.

Cross-examination.

By Mr. Ashby:

This exhibit #6-A, which contains Order #431 of the Railroad Commission of Florida that sets up Class "P" rates, relates to Mr. Perrin's exhibit #3. That is the Class rate and it is applicable to these articles contained in the Florida classification that specifically refers to Class "P" rates. It is my exhibit #6; in my exhibit #6 that is reproduced and certified to by the Interstate Commerce Commission that portion of the Florida classification (Agent E. H. Dulaney's I. C. C. #22) which shows they are log train Class "P" rates. Yes, that is applicable to other commodities as well. It does not show any other rate ap- [fol. 1694] plicable to any other commodity, but I do know it does apply to certain other commodities. My exhibit #7 refers to Mr. Perrin's exhibit #4.

"Q. What I am getting at is to — exactly how that Seaboard Air Line rate is compared to this exhibit over here, Mr. Perrin's exhibit #4?"

"A. That, of course, is due to the fact that the Order #536, dated December 16, 1916, was issued prior to the general advances, first effective in 1918, and second in 1920, and the 10% reduction in 1922."

It is correct that this Order 536, Warren Exhibit #7, the rate is published in per thousand feet. This is one I did not prepare, exhibit #4. It is true that it is converted; and I have testified that it is correct. Yes, it is on an arbitrary basis, it is on a basis of 10,000 pounds per 1,000 feet, as stated in Mr. Perrin's exhibit. I will have to say I don't know exactly what the basis of that is.

I checked this. They are obvious; you can go down the line and check them, simply dividing by one.

"Q. Is that in cents per 100 pounds for logs, or in cents per 100 pounds for lumber?"

"A. Do you mean the rate shown in exhibit #4?"

"Q. Yes."

"A. That is logs."

"Q. Well, how do you get that?"

"A. The rates are by one hundred feet of lumber."

"Q. How many pounds of logs does it take to make 100 feet of lumber?"

"A. The rates apply on logs in 1,000 feet board measure, according to the Doyle rule. Now, those rates published [fol. 1695] per 1,000 (Tes. p. 510) feet have been converted to cents per hundred pounds on the basis of 10,000 pounds per thousand feet."

"Q. 10,000 pounds of logs?"

"A. Yes, sir."

"Q. What I am trying to get at from the witness, you figure it takes 10,000 pounds of logs to cut 1,000 feet of lumber?"

"A. I might say the average for big logs is 10,000 pounds to a thousand feet."

"Q. You mean 10,000 pounds of logs, what has that to do with 1,000 feet board measure?"

"A. That has nothing to do with 1,000 feet board measure at all."

They have a rate for 1,000 feet on logs and 1,000 feet will weight 10,000 pounds. That is the Doyle rule for measurement of logs and not of lumber. It has nothing to do with lumber at all. This Order 536 did not provide a rate for 1,000 feet of board measure for logs, but Doyle rules. It is not stated in the tariff that the manufactured products was to be reshipped over the Seaboard Air Line. As I testified before probably all of the log rates operating in the Seaboard Air Line territory and Atlantic Coast Line territory are substantially transit rates, because the mills ship out the products from logs we carry in, but it is not stated in the tariff as a transit rate at all. I don't think it is limited in the Order to any transit feature at all. The manufactured products to be shipped, or rather reshipped, by the Seaboard Air Line Railway, would call for a minimum of 3,500 feet, 3,500 feet of logs. That would not be the manufactured product of logs; it has no connection with it as evidenced by the fact that it is for local consumption

or for reshipment. The manufactured product is to be sent carload minimum 3,500 feet, but it also says for local con-
[fol. 1696] sumption. Yes, the rates here are fixed in cents per thousand feet of logs, and we have 100 of them, or at least we did in the old days. So much per thousand feet. 3,500 feet would be the ordinary minimum. The reference to the manufactured product is merely an indication they are making the rates lower as they expect the lumber to move out, but it is not restricted at all to the shipment of logs that is dependent upon the shipment of lumber. Yes, my exhibit #4 was based on 10,000 pounds of logs to 1,000 feet of logs. We use 10,000 pounds of logs because the size of the logs in Florida will run approximately 10,000 pounds to 1,000 feet of logs. You take small logs, they will run about 12,000 pounds. I figure the bigger the log the less per thousand feet it weighs.

Green cypress lumber one inch thick I think weighs about 2,500 or 3,000 pounds per thousand feet. The Railroad Commission in its rules prescribes a rate of 5,000 pounds. There is no comparison between weight of logs and lumber. In the measurement of logs we have to allow for twisting of logs and crooked logs, and it is arrived at by measuring the average of both lengths of logs, and if it is a big log at one end and small at the other end that makes a difference, and if it is a crooked log a sawer has to make allowance for the space that log takes out because of its crookedness. There is no relation between the measurements of weight on logs and measurement of weight on lumber. Yes, my understanding of that is it was based on cents per thousand feet of board measure of logs and has nothing to do with lumber at all. It used to be a very common practice throughout all of our territory to have rates per 1,000 feet on logs.

(Witness excused.)

E. M. Dewey, sworn by the defendant, testified as follows:

By Mr. Alston:

I am employed by the Atlantic Coast Line Railroad Com-
[fol. 1697] Company in the capacity of Superintendent of

Freight Service, and have been in that capacity since August, 1917. I have been with the Atlantic Coast Line Railroad for 25 years. I have made a study of the movement of trains operating between Hines and Palatka on the Atlantic Coast Line Railroad in the month of November, 1930. There were 13 trains handling logs in the month of November northbound from Hines to Palatka. These 13 trains carried 490 cars of logs and 480 empties. It is right that the northbound train carried 14 empties. There were 57,820 loaded car miles. There were 1,652 empty car miles on those trains. The net tonnage on those 13 trains was 15,680, and the net tare was 8,282 tons. The figures I have given only relate to the log cars, that is, the train moving from Hines to Palatka. Those trains contained other cars that showed in this second part, and I was only (Tes. p. 515) testifying as to the log part of it. Twelve trains moved from Palatka to Hines. They carried 466 empty cars. That train made 54,988 empty car miles, and the tare tons were 7,690. The southbound trains on the movement towards Hines carried no loaded cars. Yes, they carried 466 empty cars, and the empty car miles were 54,988, and the aggregate of the empty car miles was 56,640. The aggregate of the net tonnage miles for the two trains was 15,680. The aggregate tare weight carried by the two trains was 15,972. The net ton miles made was 1,850,240. The net tare was 1,884,696. That only related to log cars. Those trains did carry something else. There were two other empty cars and a car of feed, lumber, hampers, etc., or a total of 8 loaded cars other than log cars, in the trains which moved from Hines to Palatka. There were 73 other empties, making a total of 553 empty cars, out of a grand total number of cars handled in both directions of 1,051. There was a grand total of loaded car miles of 58,503, and 62,029 empty car miles were [fol. 1698] made by these trains. The net tonnage, including the logs and the other commodities was 15,761, of which logs made 15,680. The total tare in tonnage was 17,609. The grand total of cars are 1,051, and the empties 553. The car miles were 120,532, of which 62,029 were empties. The net tonnage was 15,761, out of a gross tonnage of 33,370. The total number of net ton miles including the log ton miles was 1,856,504. The gross ton miles was 3,863,474. I got those figures from the freight conductors' train reports;

I have them here. These are the original reports and I have carefully checked them. The figures I have given are correct to the best of my knowledge and belief. I have verified all the calculations contained in the figures I have been testifying about. I have been careful in compiling the record, and it was correct.

(Witness excused.)

J. L. GHOLSON, sworn by defendant, testified as follows:

Direct examination.

By Mr. Alston:

My residence is in Wilmington, North Carolina, and I am employed by the Atlantic Coast Line Railroad at the present time as Traveling Auditor, and since January 1, 1930, and prior to that time in various capacities from July 20, 1920. Yes, I am an accountant and experienced in Railroad accounting. I have been doing accounting work more or less for the last 20 years; it has all been in Railroad work. I assisted Mr. Lamb, the General Auditor, in preparing an analysis of the out-of-pocket expenses for the Third Division of the Atlantic Coast Line Railroad and for the first and second Divisions of that Company. The First Division lies largely north of Florence, South Carolina, and the Second Division lies north of the line somewhere about [fol. 1699] Folkston, Georgia. The Third Division lies entirely in Florida. I could say that I had prepared that analysis of the out-of-pocket expenses for the Third Division. This work was performed by me personally from the basic records on file at the office of the Auditor of Disbursements at Wilmington, such as vouchers, materials and supply issues, etc. Those documents which we call basic papers are in the next room. All right, I'll get one or two of them. (Producing them.) These are vouchers prepared covering certain expenses on the Third Division commencing January, 1929. I think there are about 15 of them altogether, or 16; I don't remember exactly.

In this block are the payrolls for the Second and Third Divisions, payrolls for all kinds of assistance and work, such

as stenographers, operators, freight agents, chief clerks, assistants to agents, delivery messengers, and for all kinds of work. That would include enginemen and trainmen. It includes all assistance for which the Atlantic Coast Line pays in that Division except the shop payrolls. There are 24 of these books. This book is apparently about 22 inches by about 18 inches long. To the best of my knowledge I think the records and accounts, from which my statement was prepared, were kept in accordance with the classification and the methods prescribed by the Interstate Commerce Commission, and correctly kept. I had immediate jurisdiction over these records as Traveling Auditor, and I have access to them for examination of them. I wouldn't say that it was part of my duty to know if they were correctly kept, but in examining them, if I should find anything wrong with them, I would have reported it. It was my duty to examine them. I have examined them carefully in connection with the preparation of this statement.

[fol. 1700] For the Third Division, the out-of-pocket expenses for the 12 months period July, 1928, to and including June, 1929, was $2,059,610.66, and for the First and Second Divisions was $5,116,860.40. For the Third Division for the same period the total gross ton miles was 2,333,071,000. The gross ton miles for the First and Second Divisions for the same period was 9,606,762,000. The total loaded and empty car miles on the Third Division was 69,775,673; on the First and Second Divisions it was 297,925,506, during the period from July 1, 1928 through June 1929. The cost per mile, gross ton mile, on the Third Division was 88.28¢; on the First and Second Divisions, 53.26¢. The cost per empty and loaded car mile on the Third Division is 2.95¢, and on the First and Second Divisions is 1.17¢; I am including the out-of-pocket expenses only. I have examined the figures used by Mr. Lamb on his exhibit #7, line 9 to 15, both inclusive, the ones which were filed before the master in this case in Atlanta. Yes, the items shown on line 9 "Out-of-pocket expenses per gross ton mile .0882888¢" is the figure developed from my analysis of the out-of-pocket expenses per gross ton mile on the Third Division. That is 8.01 of a mile. The figures shown on line 5, Lamb Exhibit #8, "Out-of-pocket expenses per loaded and empty car mile 2.95176¢," and in

his exhibit #16, line 5, both inclusive, are the figures developed from my analysis of the out-of-pocket expenses on the Third Division. I drew this analysis of out-of-pocket expenses from vouchers, material and supply issues, and payroll distribution, etc. Yes, those are the documents to which I referred in the first part of my examination, these boxes of vouchers. To my knowledge and belief these vouchers and these records and these accounts on this subject of the Atlantic Coast Line Railroad are kept in accordance with the Interstate Commerce Commission's Classification of Accounts, and is in accordance with the [fol. 1701] requirements prescribed (Tes. P. 525) by the Interstate Commerce Commission for Class 1 Carriers. In my examination of these vouchers and of these records I found them to be accurate. These vouchers, material issues and payrolls, and documents which I have shown show the distribution of these several items as to the First, Second and Third Divisions. These vouchers in evidence show the actual expenses on the Third Division. They are prepared by the Third Division officers and they are so indicated that they are third Division expenses.

"Q. If you were going to enter the figures as to supplies, materials, labor and all other out-goes on the Third Division, and enter them on the permanent records, what would be the basic source to which you would go to get the figures to enter on your books?"

"A. These would be the figures."

Cross-examination.

By Mr. Gutheim:

I mentioned certain averages that I have determined per gross ton mile, per one thousand gross ton mile and loaded and empty car mile. The totals of gross ton miles and totals for loaded and empty car miles that enabled me to reach the figure per unit were obtained from the records of our Superintendent of Car Service. As to the car miles they are records from which I made examinations of the originals myself. I took the total car miles on the Third Division as was shown on the records of our Superintendent of Car Service. Those records are not under my immediate supervision. I was not testifying to loaded and empty car figures. I restricted it as to the car miles. As to the

car miles, I got it from the Superintendent of Car Service. Those records are not under my immediate supervision, but I had access to his records from which to get these [fol. 1702] figures. I took a computed fotal and used it. These vouchers are vouchers for application to the expenses of the Third Division. None of these vouchers in these boxes, of which these three are typical, cover payments for wages, materials or supplies that are used on more than one Division. These vouchers cover only out-of-pocket expenses. Out-of-pocket expenses are the current expenses for materials and supplies and labor. These are expenses that go into certain operating expense accounts, that is, the expense accounts that are involved in this particular schedule or schedules, the schedules that Mr. Lamb's accounts, as enumerated, cover, accounts 392, 394, 397, 398, 399, 400, 401 and 402. Account 392 is Train Enginemen; 394, Fuel for Train Locomotives; 397, Water for Train Locomotives; 398, Lubricants for Train Locomotives; 399, other supplies for train locomotives; 400, Enginehouse Expenses-Train; 401, Trainmen; and 402, Train Supplies and Expenses.

I did not make the distribution on voucher Audit #A-3620. I did not make the distribution on any of the vouchers concerning which I have testified. I did not take anything off of those vouchers except such amounts as were distributed thereon to the out of pocket accounts which I enumerated a few minutes ago. Prior to the time that I picked the out of pocket expense items off of these vouchers somebody other than me had made a distribution, if a distribution was required, of the total amount of the expenditures of this particular voucher or of any particular vouchers that required a distribution between accounts.

By Mr. Turnbull:

Yes, I examined the vouchers and payrolls, etc. of the Third Division to ascertain the out of pocket expenses per [fol. 1703] gross ton mile of .0882888¢ myself. I found that figure myself. Yes, in the separation of these expenses I proceeded in accordance with the classification rules of the Interstate Commerce Commission. I don't know that there is anything in that classification that specifically mentions out of pocket expenses. As I said before, my understanding of out of pocket expenses are those expenses that

are paid currently for material and supplies, labor, etc., for the operation of trains. (Tes. p. 530.) The gross ton miles that I obtain on the Third Division are the total gross ton miles on that Division, and .0882888¢ is the general average of the out of pocket expenses per gross ton mile for that particular Division. That means whether it was perishable or dead freight, or what not.

By Mr. Gutheim:

In the organization of the accounting department of the Atlantic Coast Line Railroad Company the making of these vouchers and the distribution of the items paid thereby does not come under my immediate supervision. My duties as a Traveling Auditor are in the Joint Facility Department. Yes, I was especially assigned to make this particular check. These vouchers, which are originally made and the total of which are originally distributed by parties not subject to my immediate supervision, were placed at my disposal, and I performed what might be termed the clerical work in making this distribution. In the course of my ordinary duties, I am required to be familiar with the accounting classifications of the Interstate Commerce Commission. These particular accounts were named for me as the out of pocket expenses by Mr. Lamb. Yes, in other words, Mr. Lamb having named those accounts I took the Third Division vouchers payable and showed from them the totals of amounts that were distributed to these par-
[fol. 1704] ticular accounts.

Redirect examination.

Yes, I testified that there was no grouping of accounts of the Interstate Commerce Commission under the heading of Out of Pocket Expenses, but these accounts which I have named as having been classed by me as Out of Pocket expenses are themselves required to be kept and they are numbered in the Classification prescribed by the Interstate Commerce Commission. Yes, the grouping of the eight accounts, which I have grouped under the heading of Out of Pocket Expenses are so grouped because in my experience they do represent the immediate current train cost that I can just pick out and apply to one particular train. The Interstate Commerce Commission does designate what items should go to Account [illegible], Train Engine-

men, and it prescribes what shall go under Account 394, Fuel for Train Locomotives, and so on down to each one of these constituted accounts. Yes, I testified that on these vouchers that a designation of parts on all or part of the items shown on the vouchers is made on the voucher itself, assigning all or part of the amount to certain of the Commission Classification Account. It is right that by Classification Account is meant not only those shown in the constituted accounts which are classed as out of pocket expenses, but any or all of the accounts which the Commission has named. That kind of classification is made currently as the vouchers pass in the Auditor's office. That was made currently with the outgo of that money. The people who classified the accounts to the Commission, the designated accounts, are constantly engaged in that kind of work.

(Witness excused.)

Mr. DEWEY, recalled to stand, testified as follows:

I have ascertained the volume gross ton miles for the [fol. 1705] Third Division of the Atlantic Coast Line Railroad during the months of July, 1928, through June, 1929. The gross ton miles was 2,333,071,000. For the system as a whole, as a total of all three Divisions, it was 11,929,987,000, and subtracting that Third Division figure, the first and Second Divisions would be 9,606,913,000. I have ascertained the total loaded and empty car miles on the Third Division for the same period. That was 69,775,673 miles. For the system the total was 367,701,179 miles, and subtracting the Third Division from it would leave for the First and Second Divisions 297,925,506 miles.

(Witness excused.)

C. J. OLDENBUTTEL, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

I live in Wilmington, North Carolina, and I am employed by the Atlantic Coast Line Railroad. At present I am em-

ployed as Chief Clerk for the Engineer of Motive Power, and have been employed in that capacity for six years, and have been in the department for approximately 18 years, in the Mechanical Department.

I am familiar with the Classifications of the Interstate Commerce Commission as to the accounts which have been grouped with the Mechanical Department. I know where the Third Division is. Taking Account 394, Fuel for Train Locomotives, by refreshing my memory from my working papers I have with me I can tell you what was the cost of fuel for train locomotives assigned to the Third Division for the month of November, 1930. In compiling these figures I was furnished certain data from basic records from our Third Division's mechanical office. Those rec- [fol. 1706] ords are here, and the men who furnished them are here to support the tons of coal I have in my figures. The basic records were the issues of the coal to the particular locomotive handling the log train between Hines and Palatka during the particular month of November, 1930. The cost of the coal was furnished me by the Chief Clerk to our Fuel Agent, who furnished those from their basic records, and he is here with them to support the basic records from which the figures were compiled. The same man who will testify as to the tons of coal he supplied from basic records has with him the quantities of lubricants used on locomotives. His name is P. S. Smith; he was the first one, and Chief Clerk, and the other man is H. A. Merrett. Both of these gentlemen are here. I was furnished the labor and material as to Account 400, Enginehouse Expense, by the same officer. I was furnished the total supplies, Account 399, Other Supplies for Train Locomotives, from the same Tampa man. Account 402, Train Supplies and Expenses, were furnished from the same source, from the men compiling them. Those basic records are at hand. The gentlemen that I secured the data from has them to testify to the correctness of them. The total sum paid out by the Atlantic Coast Line during the month of November, 1930, on the Third Division under the Account 394, Fuel for Train Locomotives, including Atlantic Coast Line freight to the Florida State line was $1,138.49. The total of Account 397, Water for Train Locomotive, is $39.57; Account 398, Lubricants for Train Locomotive, $8.27; Account 399, Other Supplies for Train Locomotive, $8.82;

Account 400, Enginehouse Expenses-Train, $19.05; and account 402, Train Supplies and Expenses, $115.37. The fuel included Atlantic Coast Line freight charges, that was at the rate of 5 mills per ton per mile. That is a smaller [fol. 1707] figure than the regular traffic rate which would be charged an outside consumer, if the coal had been consumed by some one else when we placed it on the locomotives. I cannot say what the regular market rate was on coal, but I can testify as to the total cost of the coal laid down at these particular points, the tonnage cost per ton, including tariff rate. At Palatka it would have been $5.95, and at Wilcox, which is near Hines at the other end of the run, it would be $5.72. Now, those two figures are sustained by the Chief Clerk to the Fuel Agent who furnished me the other cost figures, as I have said before. Yes, I mean the basic data. That is the total cost per ton to the place where the coal was placed on the locomotive. We didn't use those figures in our calculation; we used simply the cost of the coal to the used point, that is, to the Atlantic Coast Line plus 5 mills per mile. That is the rate for the used point, and we didn't add the 5 mills for the State of Florida itself. We did not charge freight from the Florida State line to the point of loading on the engine. All of the transporting that was done in Florida was without freight charge. The total was $1,138.49.

Cross-examination.

By Mr. Gutheim:

As Chief Clerk to the General Superintendent of Motive Power I have concurrent jurisdiction over the accounts insofar as naming the cost per ton which is to be applied to fuel coal consumed during the month in order to ascertain the total amount that will be charged to operating expenses, the basic figures. The original figures are made up in our department under our jurisdiction. The cost per ton at which locomotive fuel coal is charged into operating expenses is fixed by the Fuel Agent.

[fol. 1708] "Q. Do you, as Chief Clerk to the General Superintendent of Motive power, have any jurisdiction or say-so whatever with respect to what items shall be included in determining that average cost per ton, or is that

all done by him and passed over to you as a final average result?"

"A. That last statement is correct."

You understand that the calculations for the coal I have here are not based on what was charged out from month to month, but these calculations are based on the actual contracts for the coal at the time this car was being delivered at Palatka during this particular month, to be supported by the contract and the payments for the coal, so we have not based these calculations on any average figures such as you refer to. These are actualities. What goes on in normal accounting over a period of twelve months, which in the course of twelve months will all balance itself out, has nothing to do with these figures. These figures have nothing to do with the cost per ton of locomotive fuel coal as put in our operating expenses, but in the course of twelve months on the basis of figures he gives us in his correct entry into the operating expense cost. But this particular month is being exhibited here to illustrate the cost of the coal (Tes. p. 540) used in these log trains and it is based on the actual cost of the coal as illustrated by the contract and the purchase of the coal. Our operating expenses, on account of locomotive fuel coal consumed, as the cost per ton, would not check from day to day with the figures that I have gotten together here, or maybe from month to month, but in the final outcome it would all reach a balance. That is done in that manner so as to describe a com-
[fol. 1709] parative accounting procedure.

"Q. What I am getting at is this: Is the cost per ton that you applied to the tons actually consumed in getting a total of operating expenses for the month, for any month, a cost per ton that is computed in the manner in which you have computed the cost per ton here?"

"A. No. We don't enter into operating expenses the cost of handling coal over our own rails, say from the junction points to the Florida State line, but is cost that is not placed in the records in dollars and cents, but there is a cost there to you just the same."

If we placed that in the record of dollars and cents it would be a charge for operating expenses. Yes, then we would have to credit something. It would go to the same account I suppose as the revenue if you were hauling for

somebody else. I don't handle any such account as freight revenue, and I am not an authority as to that. I am not an authority on freight rates; I don't know anything about it. The basis for my statement that this 5 mills per ton is less than what the rate would be to the point where it was consumed is the figures that were furnished me by the Fuel Department that I have just referred to and said would be supported. These figures are taken on the figures used here, plus 5 mills per mile, and are from the used point to the Florida State line. The coal that we haul to Palatka does not come from the same places; it comes from two junction points, from two different originating points. I am not informed as to what mines it comes from. That is not under the jurisdiction of our department, but I do know that coal that is consumed at Palatka comes through Yemasee, South Carolina, and the coal that is consumed that is placed on the locomotives at Wilcox Junction, Florida, [fol. 1710] comes through Montgomery and down to Thomasville, and the Perry short cut.

"Q. Have you ever had occasion to check the commercial rates on your locomotive fuel coal and what the commercial rate on that would be, if it were a commercial coal, from the mines where you got it, to your destination?"

"A. Nothing, except in the case of this particular case here, that I had occasion to get the figures including the freight rate over our line to destination. I have not taken the commercial rate on coal and applied the miles of haul to it, and determined as a matter of arithmetic whether you do or do not get 5 mills per ton per mile.

I have not taken this 5 mills per ton per mile into account in arriving at the cost of any other locomotive supplies, but our department also had jurisdiction and does some original accounting in additions and betterments work; that is, capital accounts, and we charge in those accounts 5 mills per ton per mile for the handling of our own freight for investment purposes, and that has not, as far as I know, been contested by the Interstate Commerce Commission Valuation section, and neither the Bureau of Accounts, as far as not being equitable for this purpose. That is outside of operating expenses, but just the same it is recognized as 5 mills per ton per mile as a reasonable figure. There are no other operating expense accounts under my jurisdiction where

we have taken supplies into account, adding this 5 mills per ton per mile.

Direct examination.

"Q. Though you didn't charge on this fuel, used on these locomotives from the receiving point, at least to the Florida State line, would that keep down the expenses? Would the expense of hauling still be there?"

[fol. 1711] "A. It is just like driving your own automobile to a place; it costs you money. It costs you money to handle it."

And whether or not you charged it the expense was there just the same. I would say that it would not be fair to charge that expense of bringing that coal to traffic which had nothing to do with the use of the coal.

"Q. Whether you put that transportation charge from Yemasee, in the one instance, to the Florida State line, and Montgomery, in the other instance, to the Florida State line, you are only putting in expense which indisputably exists in handling that coal against a traffic for which it is to be used?"

"A. Yes, sir; that was the object of putting it in there."

(Witness excused.)

P. S. SMITH, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

My name is P. S. Smith, and I live in Tampa, Florida. I have been in the Atlantic Coast Line's service for about 19 years, and have been chief clerk to the Superintendent of Motive Power for the Third Division for about six years. The headquarters of the Superintendent of Motive Power for the Third Division are at Tampa, Florida. We have a shop there. I have some original documents showing the expenses of certain accounts called out-of-pocket expenses for the Third Division, about which Mr. Oldenbuttle has testified. (Tes. p. 545.) I have the cards for the fuel and the labor and the time tickets. I have those vouchers here.

I have the time tickets from the time book at Palatka be-
[fol. 1712] fore me. Yes, we are talking about the month of November, 1930, and about the Third Division of the Atlantic Coast Line. Here are several months here at one time; it starts with November 1st. I have turned to a sheet on this form where the blank after the word "point" is filled in with Palatka, Florida, the date filled in November 1, 1930, and then under the column of numbers, which says "1"; that "1" is the pay number of the foreman; each man has a number. Horace R. Rich was that "1".

"Q. He was the foreman, and the rate was $280.00. What does that mean?"

"A. $280.00 per month."

Yes, he worked 12 hours that day. And it goes on down with a number of other men for that day. Some were paid by hours and some by days. I have such a record for every business day and for Sundays too; some of them worked Sundays. That is the time ticket, and the payroll is prepared from that. These were signed by H. R. Rich; he was the foreman. This man worked at Palatka, Florida, at the shops. The tickets were sent to my office and we made the payrolls from those for the first 15 days, and we drew one set of rows and then another half would go on another set of rows, and payrolls prepared from them and checks issued. Those books were correctly kept. After they were made out the payrolls were sent to Wilmington and checks made from the payrolls, and they sent out the checks. If the men kicked about any of the checks they would write to us, and we would adjust it if necessary.

This is the form 430, issued by the foreman at Palatka, and this shows issues of coal to all engines coaled at Pa-
[fol. 1713] latka. One column is headed "Initials." That is the coal unloaded, and this is the engine number district. That is the initial of the car, C. C. & O. No. 41602, and weight 110,800 pounds. That is the car, the number and weight out of which this coal was gotten, and this is the weight of the coal, and not of the car. The engine number is #995, and is in the Ocala district, and has 9 tons. We have others of the same kind of things; that is what that means. Yes, that is November 1st. Yes, on November 2nd we have the same kind of things.

"Log train" is marked on this one, but I did not write that; somebody else did. I have some of these for every day of the month, including Sunday. In my opinion, all of these are correct. The foreman turned this coal over to the engine; he has charge of the chute and the shops, and he signed the tickets. It was my business to keep these tickets; they were kept in our office, and under my supervision.

"Q. Are these the tickets from which this coal was paid?"

"A. A card was obtained for that; the price I have nothing to do with that."

I have other records. This is the Wilcox Junction; that is where the coal was issued there. That is the Ocala district, but at Wilcox Junction. The other was at Palatka. This is the same kind of record I have for the other showing what car the coal came in, the number of the car and the weight, and the engine on which it went out, and what rate it is made from, and the number of tons that each one took. That is correct for that District. That is the basic record for that district. I have here others. This is the time ticket for the men at Hines, the inspector at Hines. His time is [fol. 1714] kept with these men at High Springs, Florida, and a ticket is sent in for two periods of the month, the first period, and at the end of the first period, for the second period. (Tes. p. 550.) This is filled out with Cross City and Hines. The Chief came from Cross City, but his work is at Hines. This man's name is H. P. Watson, Account "C. I." That means Car Inspector. The rate was 73¢ per hour; that is his basis rate. He received 2¢ extra for special scale that was given him by our office. In other words he receives 75¢ per hour. He was a special scale man, and we gave him 2¢ extra, which is given for special scale on his line. One of these is for November 1st to 15th, and the other from November 15th to 30th, 1930. That is the basic record of that.

This book "Workman's Time" is the book that the car inspector makes up himself at Hines. He turns this in to the Master Mechanic at High Springs, who issued this ticket in this book and sends just the originals of these tickets to me, where the payroll is prepared. The only account in this is Watson's; he is the only man they had at Hines.

I have the oil issues and issues for lubricants, lubricating oil in that service. This is made up by the foreman at Palatka, showing the total issue per month for each engine operating out of Palatka. There was not a like arrangement at Hines; no supplies furnished at Hines. That is a basic record. We don't issue the vouchers; this is just for accounting purposes. There is nothing paid for this. This is just a record of the issues.

I have no others. Month to month accounts were kept the same way. Yes, this is the data that I furnished Mr. Oldenbuttel from which he furnished the calculations about which he has just testified.

[fol. 1715] Cross-examination.

By Mr. Gutheim:

I don't know who made the notation on these carbon sheets which show the coal issued and indicates that the coal that went into a single engine, or a certain engine, was for a log train. They were made before they came to me.

"Q. Do you know whether the man who signs the reports also shows the data there that indicates that coal that went to engine 806, or 803, on different dates was for the log train?"

"A. That looks like his writing, yes, sir."

"Q. It wasn't part of the original record, was it?"

"A. It was like it came to me, yes, sir."

The original record that I have is a carbon copy, and that is written in ordinary black pencil to show what went to the log train. I don't see anything on there with respect to any of the other engines to show what trains they pulled; it just shows what district it is on. It looks like the foreman put that information on; it looks like his writing. I don't know when he put it there. No, I don't know whether he put it there. I don't know whether it was put there for the purpose of making the compilation for this case, or whether it was put there as a matter of current record. There is nothing on either of these coal issue records that indicates whether the cars, in the column headed "Coal Unloaded" came from. I know that the coal for Wilcox over the L. & N. comes from Montgomery, and I know that the coal for Palatka comes to us from Yemassee, South Carolina. I

do not know whether it comes from Tennessee or West Virginia.

"Q. Now I hand you these three batches of statements, that shows coal issues, the one signed by Foreman R. Kirkland and covering the transaction at Wilcox, and I want you to say how do you know what there is on this one that [fol. 1716] indicates that anything was issued for the log train?"

"A. The engine numbers were taken by me from the train sheets, and in that way I got the engine numbers to make up this report from."

I did not show on these sheets in any way an indication of what engine numbers did handle the log train. I want this record to be just as it came to me, and the information put on the work sheet. Mr. Aspinwall, who will testify here, has the time tickets prepared by the engineer, showing what engine he handled on the train. I did not get that information from him in order to make this; I got it from the train sheet. There is nothing on this train sheet to indicate what tons we should take off as tons handled by log trains. I have these records as I got them, and they mention the engines in this service. By getting the engine numbers from the time ticket of the engines I can, by referring to these sheets covering the transaction at Wilcox, tell you day by day how much went into the log train. The "Foreman Time Book" that I have presented is a carbon copy of the time ticket, and it checks with the payroll that we have in Wilmington, that is handled by the Treasurer. (Tes. p. 555.)

Under date headed Nov. 3, 1930, I don't know who put the pencil note "3 Hours Log Train" against item #6, W. A. Connover. I presume the foreman did it. I don't know whether that was on there at the time the record was made or subsequently dated. I did not use it in any way in getting up this information. I don't know what the erasure is that has been made to the Connover items on dates marked November 1, 1930, November 2, 1930; that was apparently done by the Foreman, and I know nothing of that.

[fol. 1717] "Q. Now I show you the date November 4th, and ask if you can agree that there has been inserted in ordinary pencil, and then erased, an item referring to the log train?"

"A. I cannot read that. You are looking through the paper; that is what you see."

"Q. Oh, no. Look at this."

"A. Now your eye sight is better than mine."

"Q. Well, you don't know what it is?"

"A. No, sir; I don't know what it is; I didn't put it on there."

"Q. Do you know anything about who made these additional pencil notations with respect to hours on the log train, and who made other notations, and then erased them on other dates?"

"A. It must have been done by the foreman. I don't know definitely because this is his record."

"Q. Is there any other data in there that shows any other information contained in that foreman's time report in reference to the log train?"

"A. Well, now in the case of the foreman and the engine watchman, all of the engine watchman's time is charged to account 388 and 400, and 1/6 of the foreman's time is charged to these two accounts. Those two accounts were added together and they represent enginehouse expense, which is hostling and cleaning fire, etc. from the locomotives. We take the total of that expense for Palatka, Florida, and divide it by the total engines handled at Palatka, Florida, which gives us the average cost per engine for the handling and cleaning of fires, and then we use the number of engines handled on the Wilson log train, and [fol. 1718] multiply that by the average cost to get our cost for account 400, as shown in his report and reported by Mr. Oldenbuttel."

It is apparent that the time of these various men, reported by Foreman Rich, is divided between accounts on the original report, that is, account 308 or 314, or 400 or 402, which are the accounts specified as against Foreman Rich's own name, and that we will have account 314 or Shop Expenses or something else to ascertain just what that particular time is a proper charge to. There is nothing that I know of that, in the original record as shown in the carbon pencil, indicates that that belongs to the log train. This covers the entire expense at Palatka, and does not cover the log train itself. That is, the log train itself is not shown separately. Yes, the only items in this book that refer particularly to the log train are items such as

were indicated on November 3rd, where there is an insertion in ordinary pencil. I just presume it was the foreman who made that. I do not know whether subsequently made, or if subsequently made, how long subsequently made.

Redirect examination.

"Q. Mr. Smith, let's take this sheet at Palatka, which shows the extra expense, and on November 2nd I find, under the column "Engine Number" several numbers, among them engine number 806, and that there was distributed or loaded on that engine 11 tons. How do you know that was a log train?"

"A. I didn't put the log train on there; I got my engine numbers as stated before from the train sheets."

"Q. Would that 806, or would the train sheet show 806 in the log service that day?"

[fol. 1719] "A. It showed it on the log service trains on certain days. I couldn't say as to that date. I got the information as to the engine numbers from the train sheets, and not what was shown on that sheet there."

"Q. On November 5th, I find the same engine getting 10 tons of coal at Palatka, and if he had gotten 11 tons on the 3rd he went on to Hines, I presume?"

"A. I presume he did."

He gets fuel at Wilcox; he could get fuel at Palatka and Wilcox. Yes, on the 5th he was getting it at Palatka.

"Q. Let's look at the Wilcox sheet. I find that engine 806 got 8 tons of coal at Wilcox. Now how far is Wilcox to Palatka?"

"A. I should say 120 miles."

Wilcox is between Hines and Palatka. It is 119 miles from Palatka to Hines. From Wilcox to Hines must be about 12 miles, I presume. I thought it was further from Palatka to Hines.

"Q. And on November 5th that same engine was getting 8 tons of coal at Wilcox. Was it getting the coal on its return movement, do you think?"

"A. I don't know."

If on November 5th at Palatka the engine got 10 tons, and on the same day at Wilcox it got 8 tons, it must have been on its way up. The coal issued at Palatka would be issued

only once a day, but he could get coal at Wilcox on his way to Hines, and get coal on his way back from Hines to Palatka at Wilcox. Wilcox is an intermediate point, and Palatka is the end of the trip.

"Q. We see engine 806 getting coal on the 5th at Wilcox, and on the 6th we find it getting coal at Wilcox, and that [fol. 1720] would be on the return journey probably?"

"A. No doubt."

"Q. Then on the 7th it gets coal at Palatka and also at Wilcox, so apparently it got coal when it started at Palatka and got coal at Wilcox as it was nearing Hines, and on its way back on the 8th it got coal at Wilcox returning, and it always got less coal on that return trip than it did on the going up trip?"

"A. Naturally, because the distance is less."

There is no doubt about 806 being a log train engine. We use the 800 on log train service, but whether it was used on that day I cannot say. It can be furnished by someone else. Those records which I have exhibited from the train sheets, carbon copies, are kept by the foreman and verified by him against the train sheet (Tes. p. 560). I should have said check sheet. The foreman keeps a sheet on which he shows the men's names, and for each day of the month puts them on here and he checks out there 8 hours, and then he goes ahead and makes his book from that sheet, and that sheet is sent into my office and the payroll is prepared from it. The payroll is sent from Wilcox; the checks sent by it and checks delivered. Yes, I made the payrolls, and the checks went back to the men. If there were any complaints they were handled at the office where I am working.

(Witness excused.)

"Mr. Alston (to Mr. Lamb): Mr. Lamb, do you know on this exhibit of which you have just given me a copy, what are the number of tons of coal you took into account here was?"

"A. Mr. Oldenbuttel had those figures. You can get him back and get the figures from him."

[fol. 1721] "Mr. Oldenbuttel: At Palatka, 136, and Wilcox, 155, or a total of 291."

"Q. Have you got the details of how you made the 155 at Wilcox?"

"A. No, I have not. I only did the compiling, as I stated before, and had the details furnished me."

H. H. MERRETT, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

I live in Wilmington, North Carolina. My business is Chief Clerk to the Fuel Agent of the Atlantic Coast Line Railroad. The business of the fuel agent is to purchase the fuel for the service. I have the original contract with the mines dealing with the purchase and use of coal on the Third Division of the Atlantic Coast Line Railroad Company during the month of November, 1930. This is a contract with the National Coal and Coke Company, and another with the Clinchfield Fuel Company, and which is for one year from July 1, 1930, one for 150,000 tons, and the other for 130,000 tons: one for wash run of mine and another for straight run of mine. It is right that the shipment from the Clinchfield Fuel Company, which is for 130,000 tons and for straight run of mine is $1.38 per net ton, F. O. B. cars mine, and the other for wash run of mines, that is, the National Coal and Coke Co., is for $1.60 net ton, F. O. B. cars mine, and the place of shipment is Pamerton. And the place of shipment for the Clinchfield Fuel Co. contract is the Moss Mines, West Virginia, and that coal is also shipped from Dante. The fuel that was used at Palatka on the Third Division of the Atlantic Coast Line [fol. 1722] in Florida in 1930 came from western West Virginia, from the mines at Moss and Dante. The freight rate was the same whether it came from Dante or Moss.

"Q. Where did the coal come from that went to Wilcox?"

"A. We had contracts with two or three over there. I only got the main contracts out, but that came from Powerton that I got there. We also got some from New Castle and Labucca."

Those places are in Alabama, and so is Powerton. The coal that went to Wilcox came from the L. & N. Railroad here, and the coal going to Palatka from the C., C. & O. The coal that came over the C., C. & O. is delivered to the Atlantic Coast Line at Yemasee, South Carolina. It proceeded then to destination over the Atlantic Coast Line Railroad. The coal that came from the Alabama lines was delivered to the Atlantic Coast Line Railroad at Montgomery, and proceeded thence to destination over the lines of the Atlantic Coast Line. The freight rate on the C., C. & O. from the mine down to Yemassee was $1.98 and 4/10¢ per ton. The rate from the Alabama mines to Montgomery was 97.3¢ per ton. The commercial rate, the through rate, on that coal from Yemasee and Montgomery, respectively, to Palatka and Wilcox, respectively, was $5.95 to Palatka, and $5.72 to Wilcox; that is including the cost of the coal too. That includes the cost over the Atlantic Coast Line and the cost of the coal too. We charge the regular rate for that coal over the Atlantic Coast Line, but Mr. Oldenbuttel has charged 5 mills per ton per mile. The 5 mills per ton per mile does not make the price I have here. The cost of the coal at destination, Palatka and Wilcox, excluding any charge of the Atlantic Coast Line, would be $2.573 for Wilcox, and at Palatka, $3.364. That excludes any charge for transportation at all over the Atlantic Coast Line. I have [fol. 1723] not got the figures if you add 5 mills per ton, but I have the figures at the commercial rate. The commercial rate on the coal from the Clinchfield mines laid down at Palatka would have made the coal cost on the track at Palatka what the freight and coal together would be, $5.95, and at Wilcox, $5.72. I don't think Mr. Oldenbuttel has charged so much on his account. I have not figured it out myself, but 5 mills per ton per mile figures less than this.

Cross-examination.

By Mr. Gutheim:

The rate of $1.984 from Dante to Yemasee is a division of the rate, that is proportionately to Yemasee. That is proportioned out of the rates to a destination on the Atlantic Coast Line Railroad that accrues up to Yemasee to the line. (Tes. p. 566.) The same is true of what I spoke of as 97.3¢

from Alabama. The destination to which the coal was destined from Dante that named the rate or fixed the rate, which to Yemasee was $1.984, is Palatka. The foreign line rate from Dante to Palatka is $1.984, and the Atlantic Coast Line gets $2.586 on the commercial rate. Relative to the through rate from Alabama mines to Wilcox, to Montgomery it is 97.3¢, and over the Atlantic Coast Line $3.147, a $4.12 total. The F. O. B. Cost of the coal on our Clinchfield contract was $1.38, plus the freight from Dante to Yemasee of $1.984, and that makes $3.364. Now I think I have here the figure $5.95; that was the total charge. The freight over the Atlantic Coast Line makes up the difference between $3.364 and $5.95. That freight over the Atlantic Coast Line Railroad is the balance of the commercial rate. The 5 mills was handled by the Superintendent of [fol. 1724] Motive Power. From my own figures the difference between the $3.364 and $5.95 is the $2.586, which is the proportion for the Atlantic Coast Line out of a through rate of $4.57. We didn't charge 5 mills per ton at all. That is the through rate I am getting at now. The $5.95 is what it would be if they charge that to destination. I have nothing to do with the 5 mills part of it.

(Witness excused.)

C. J. OLDENBUTTEL, recalled to stand:

[illegible] by Mr. Gutheim:

On top of this $3.364, which is what the coal and freight cost from Dante to Yemasee, I charge 5 mills per mile, and that is based on Yemasee to the Florida State line of 162.5 miles, and I got that from the regular working time table that the Dispatcher uses in handling trains over the Road.

"Q. That means that you charge 81¼¢ per ton to the Florida State line?"

"A. I don't have it in just that way; I have figures here which give it the way I have here."

"Q. Well, $4.176 with 5 mills per mile added, after the coal strikes the Atlantic Coast Line Railroad, so that leaves you 81.2¢?"

"A. That I put in there on the basis of 5 mills per mile from Yemasee to the Florida State line."

The total value of the coal laid down at Palatka, if the commercial rate had been used, is the same figure I testified to and which Mr. Merritt has also testified, as $5.95. In my computation I used 5 mills from Yemasee to the Florida State Line, and charged on after that. This Atlantic Coast Line proportion of the regular tariff rate has nothing to do with the figures I have furnished Mr. Lamb, [fol. 1725] bec*ause* I didn't do it. The mileage from Montgomery to the Florida State line is 221.5. At that same 5 mills that means $1.107 a ton. We charged nothing from the Georgia-Alabama State lines to Palatka.

"Mr. Gutheim: Will you give me that other answer: Did you charge this 5 mills per ton mile from Yemasee and Montgomery, respectively to the Florida State lines on your own volition or under somebody's instructions?"

"A. I was asked to consider what would be equitable for charging the coal, and in the discussion I offered the suggestion that we were handling freight over our own line for our own purposes at 5 mills, and that is what we use in compiling for addition and betterment purposes, and that proved to be satisfactory, and in other words, it was agreed to that my suggestion was equitable, and I was allowed to put it in the record."

Mr. Lamb asked me; he requested me to make up the information.

By Mr. Turnbull:

"Q. Would you say then that the 5 mills per ton on the coal was all of the expenses on the coal that went into this figure, out of pocket expenses per gross ton (Tes. p. 570) mile of .0882888¢, that was given by Mr. Gholson?"

"A. Do you mean Mr. Oldenbuttel? I think I did figure that."

"Q. Under the out of pocket expenses per gross ton mile of .0882888¢, that was furnished you by Mr. Gholson?"

"A. I don't know anything about Mr. Gholson's testimony or his figures."

(Witness excused.)

[fol. 1726] A. D. ASPINWALL, sworn by defendant, testified as follows:

Direct examination.

By Mr. Alston:

My name is A. D. Aspinwall. I live at Jacksonville, Florida, and have been in the time keeper's office of the Third Division of the Atlantic Coast Line since 1916. I have been chief time keeper since August 1925. The time of the engine and train employees is kept or was kept in November, 1930, for the Third Division in this manner: When an engineer completes a trip or day he makes a time ticket. He passes that to his chief dispatcher who approves it and in turn gives it to his Superintendent who approves it, and then it is mailed to the time keeper's office where it is entered on the time book, or consolidated tickets are compiled, and from the time books it is placed on the payroll. The engineer reports in addition to his own time that of his fireman. The conductor takes the same procedure in regard to his time and that of his flagman and brakeman.

These are 27 reports for the month of November, 1930, on form 148; some are signed by the conductor and some are signed by the engineer. These forms were prepared by the conductor and engineer, respectively, operating trains between Hines and Palatka, Florida. Those trains were known as the Hines Log Train or the Wilson Log Train. These entries of 806, 804 and 803 are: November 1, 1930, shows 806; the same for the 3rd; the same for the 4th; same for the 5th, 6th, 7th, 8th, 10th, 11th, 12th, 13th, 14th, 15th, 17th, and 18th; all show 806 and 803. Just why two engines are shown there I do not know. The 19th shows 803; the 20th, 803; the 21st shows 803; the 22nd goes back to 806; the 24th, 806; the 25th shows 806; the 26th shows 806; the 27th shows 806; the 28th shows 806; and the 29th [fol. 1727] shows 806. These papers which I have in my hands are the original or basic data from which the accounts of the Atlantic Coast Line are made on this subject. On the Third Division we keep these papers three to four years. This form is in use for like reports over all the System. This train that is consistently described as the

Wilson log train is The Wilson Lumber Company or the Wilson Cypress Company; I cannot say which.

"Mr. Ashby: The Wilson Lumber Company is at Perry. It is the Wilson Cypress Company."

Cross-examination.

By Mr. Ashby:

Some of these forms have Wilson Log Train on them and others do not because some of the more thoughtful conductors and engineers put it on there and others do not. That is the best information I can give. On these that it is not on we would know it was a log train because that is the only train we have between those two points, or had at that time, or at the present, so far as that goes. We never had any other train between those two points but the log train. The log train is the only train that originates and terminates between those two points, I mean the only train from Palatka to Hines and from Hines to Palatka. There are other trains that use that part of the track, and trains that handle freight too. I cannot recall ever having operated anything but the log train between these two points. They are also marked Log Trains on form 787. The train sheet is made up by the dispatcher in the operation of his trains, and I have never seen an original train sheet.

(Witness excused.)

[fol. 1728] F. B. Langley, sworn by defendant, testified as follows:

Direct examination.

By Mr. Alston:

I am Superintendent of Transportation, Third Division, Atlantic Coast Line Railroad, Jacksonville, Florida. The Third Division of the Atlantic Coast Line Railroad is from Jacksonville south, or High Springs south, and from the yard limit boards at Thomasville south. Some of the line in Florida is in the Second Division, that portion north of Jacksonville and north of High Springs. I have jurisdiction over the operation of locomotives and trains in my

Division. I could not give the amount of account 392, Train Enginemen, spent by the Atlantic Coast Line Railroad in the Division for the month of November, 1930, without the figures which have been furnished, as I understand, by the time keeper who works in my office. I think possibly he has those figures with him. The terminal service performed by the train which operated between Hines and Palatka, sometimes called the "Wilson Cypress Co. Log Train" was the switching service; of course, at Hines, where the logs are delivered to us by the Wilson Cypress Company. I have blue prints to show just what service is performed, if you would like to have them, #9977-69. At the right hand corner of this is the words "Atlantic Coast Line Railroad Company, Local," etc., that means proposed locally for Wilson Cypress Company trians. The switching movement at Hines is: the Wilson Cypress Company's engines placed the loaded cars of logs on its two tracks, or stem of "Y", one a score track and the other a double ended track, as shown in red. Our engine ties up for the rest, the engine crew ties up for rest, on the track shown in red between the "Y" tracked and marked in red "Coal-[fol. 1729] ing Track". The engine moves from the coaling track, leaving the caboose just in the clear of the pass track, which track is parallel with the main line shown north bound to Newberry. The engine then moves on to what is termed the north leg of "Y", which is shown in red, back to the two tracks shown in red marked "Wilson Cypress Company," the set off track. The spur track holds 18 cars and the double ended track about 30. I said about 30, that was just approximately. That is right, 36 cars. The engine picks up cars from the spur track and doubles over on cars on double ended track; then proceeds to the main line and couples to the caboose car, which is usually set just in the clear on the pass track, which from that point the train leaves for Palatka. The pass track is the white line parallelling the main line. Now that is the loaded movement. This train leaves, as I have stated, from this point for Palatka. I have the blue print showing the movement of the train after arriving at the Palatka yard. The map before me is #11605-84, and in the right hand lower corner shows Atlantic Coast Line Railroad, or "A. C. L. R. R. Track Layout, Palatka to Florida." The several tracks as shown on the blue print beginning at the

point 36,3725, plus 28 P. S. is known as the Florida Southern Yard. The movement of the Wilson Cypress Company train is to come into either one of the four tracks, where the engine is uncoupled from the train, and proceeds to the shop, which is located between the legs of the "Y". The switch engine couples to 20 of the cars at a time and pulls back towards Rochelle, far enough to clear the switch, and proceeds down the lead around "Y", the south leg of "Y", on the pass track on to main line to connect with track serving the Wilson Cypress Company, and continues to a point shown on print as 14 plus 45 P. S., where the cars are left [fol. 1730] for unloading by the Wilson Cypress Company. The cars are moved towards the end of the track with a cable. After these cars are unloaded we are required to have a switch engine on hand to promptly move the 20 cars back to the Florida Southern yard, and to pick up 20 additional cars of the number left after the first 20 are unloaded. These cars are handled in the same manner. Where there are more than 40 cars it requires three of such trips with the switch engine. These trips, as you will note, pass over the pass track, which is used in addition to our train by the G. S. & F. as a main line for their passenger and mixed trains. The G. S. & F. is the Georgia Southern & Florida. It also moves from a point 36695 P. S. to 36708 plus 14 over the main line, where they encounter main line train operations and are very often delayed in moving over this portion of the line. I believe that covers it. Yes, that requires the keeping of a switch engine at Palatka at all times during the period of these movements, and as soon as the movement is discontinued the switch engine is cut off. It is approximately a mile and a half from the point which I have designated as the Florida Southern Yard, and the point which I designate as 14 plus 45 P. S.

The switch engine is used in this service for about six hours with a train of more than 40 cars. Yes, it moves the first cut of cars and then it waits until they are unloaded, and then it takes these empties out, and then it brings another cut of cars and goes through the same process, and the maximum number handled at a time is 20 cars. That is as many as can be handled by the Wilson Cypress Company's unloading force on account of the length of the track which extends out over the River. The movement of

the empties back from Palatka to Hines is this: as a switch engine returns the empties from the Wilson Cypress Com-
[fol. 1731] pany's plant they are placed on a track in the Florida Southern Yard, and made up into trains by the switch engine. The road engine moves from the shop located between the legs of the "Y", over the same tracks as shown in red and backs into the track on which the empties are placed, and from that point moves to Hines. It usually takes about six hours in the movement of the empties to Hines. It takes about eight hours to remove the loaded cars from Hines to Palatka. There is a coaling station at Palatka and one at Wilcox. Wilcox is located at about 18 or 20 miles from Hines toward Palatka. I offer in evidence as Langley Exhibit #1 the first map or blue print, that is the one showing the trip discussed, and the second map as Langley exhibit #2, that is the Palatka condition.

(Objection by Mr. Ashby.)

Cross-examination.

By Mr. Gutheim:

Referring to this map, Exhibit #1, where we come in with a train of empties from Palatka, we proceed to deliver those empties to the Wilson Cypress Company in this manner: When the Wilson Cypress Company's engine is on hand to take the empties from our train they are parked on what is known as the north leg of the "Y", shown in white, beginning with point 6831 plus 97, and backed down to the Wilson Cypress Company's engine which is usually located near the two tracks shown in red marked "Wilson Cypress Company's Set of Tracks." If that engine is not on hand to take the cars, they are usually left in the pass track, which parallels the main line. This is on account of the Wilson Cypress Company storing loads on the two tracks shown in red. (Tes., p. 580.) When we come in with
[fol. 1732] a train of empties at Hines, we come in from a point shown on this map "To Newberry". We proceed usually through the pass track beyond the "Y", and park therein. We usually cut off the caboose and later run the "Y", and back into the coaling track with care. Yes, then after coming to pick up our loads we come back and then go up the leg of the "Y" marked red to pick up our train

of loads. The Wilson Cypress Company's engines are usually there and ready to accept the cars; that is as a general thing. It is right that as we back the train of empties in, having previously detached the caboose on the white leg of our "Y", as shown on the map, the Wilson Cypress Company's engine is there to couple on to the other end of the train and take the empties into the woods, with the exception of the caboose, which is usually left on the main line or pass track, before reaching the "Y". Sometimes the Wilson Cypress Company places loads on the spur track, occasionally to straighten up the loads, and it very often occurs even though there is less than 36 cars, that they are picked up from both tracks. I should say that we pick up from both tracks about 75% of the time. The information of that fact comes to me by actual knowledge in the operation. I have that actual knowledge of the operation from the various times I have been and watched the operation, and as a matter of information I had this territory as Superintendent for the period from 1925 to 1930. I couldn't give you the information definitely as to how many times I was at Hines, and how many times I watched the operation in 1929 and 1930; I was there, I would say, about 4 or 5 days in the month. When we were coming with our train of loads to Palatka, this series of tracks that apparently lie east of point 36725 plus 28 is what I might term our inbound track; that was the Florida Southern Railroad. Yes, the Florida and Southern yard is a part of the Atlantic Coast Line System. This red line I have marked [fol. 1733] on this exhibit #2 is merely put on to support the movement of the train as handled by the switch engine. The total length of the haul from this yard over to where we put our cut of 20 cars on the Wilson Cypress Company unloading track is approximately a mile and a half. When we place those cars on the Wilson Cypress Company's unloading tracks our engines do not wait right there. They usually perform some other work, if they have some other work to do, but they always keep in close touch with the Wilson Cypress Company's office in order to give them a switch promptly when needed. I couldn't give the total area of this layout of tracks in our Palatka yard except from information shown on the print. When the Wilson Cypress Company is operating we use two switch engines in this area, but at other times only one. The work that

the engine that switches the Wilson Cypress Company's plant does in and about Palatka is any work that they can do around the passenger station while waiting to receive word from the Wilson Cypress Co. that they are ready for a switch. The passenger station on this exhibit #2 is shown as "Depot", and marked #29, in between one of the legs of the "Y", the Jacksonville-Tampa main line and the Florida Southern line. Right in this territory the switching is done, a great deal of the switching is done just south of the depot. That is the switching of only freight service. This miscellaneous service works within a radius of half a mile between the depot and point marked 36702 plus 40. That is on the main line near the connection of tracks serving the Wilson Cypress Company. That particular engine very seldom gets north of our Florida Southern line for any work, for there is very little switching to be done north of that point. The majority of the industrial [fol. 1734] work is right in the territory, as it is between the passenger station and the point 36702 plus 40. That is where this engine is available most of the time when it is not actually working the Wilson Cypress Company's track. Other trains of other freight and logs come into Palatka on this same inbound yard very little. We have one mixed train operating between Rochelle and Palatka that uses the Florida Southern Yard. Yes, there is other inbound freight that comes into Palatka on this Jacksonville-Tampa line.

"Q. Is that also destined to Palatka through the inbound yard on to the tracks shown near the shop? Can you designate that a little more closely so that I can locate it here?"

"A. The tracks in between points 366821 plus 46, and 36702 plus 40."

"Q. Now when those trains of inbound freight destined to Palatka come in, do they also, if carload freight, go through of delivery to the consignee's track?" (Tes., p. 585.)

"A. Yes, sir."

"Q. And is there a delivery in cuts of 20 cars, or is a delivery in cuts of one or two, or as many cars as may happen to be consigned to one particular consignment?"

"A. One or two as the case may be."

Then these cars, when moved inbound to our consignee are usually stored according to unloading goods in ware-

house; or according to unloading space for inbound material, as the consignee may designate, except those placed on team tracks. Yes, we also move freight out of Palatka, freight originating there, but very little. Yes, such as there is, if originating on yard tracks is picked up by our switch engine. Yes, in cuts of one or two or as many cars as the consignor happens to have, and moved in cuts of one or two cars, or as many as we may pick up at our outbound yard. The loads are then assembled and set out on convenient tracks. The outbound trains usually pick them [fol. 1735] up from these tracks.

By Mr. Ashby:

I couldn't say how long the same method of handling this particular log train has been in existence, beyond 1925. The only increase made since that time was the increased number of cars, which required more trips in handling the logs from the Florida Southern yard.

"Q. All of this is done under your service contract with the Wilson-Cypress Company, which contract is in evidence in the proceeding before the Interstate Commerce Commission and before this Court?"

"A. I am not familiar with the contract."

I don't know that I am familiar with the contract that is in existence; I would know it if I saw it.

"Mr. Alston: We will consider that these operations are under this contract unless a subsequent investigation shows they are not, and then we will offer evidence to that effect."

"Mr. Ashby: That is perfectly satisfactory."

"Mr. Gutheim: May I ask this additional question: I understood him to say on cross-examination that there was very little business on these logs that came in through Florida Southern, but that there was business on the Jacksonville-Tampa line, the main line. Will you tell us what the nature of that business is, whether mostly log traffic, or lumber traffic or what?"

"A. No, the general run of business is merchandise, automobiles, oil and things of that kind. Fruit and vegetables come up there too, it does on the main line."

"Court: Are logs still being handled by the Railroad Company under this contract?"

[fol. 1736] "Mr. Alston: Not at the present time. Shippers' Terminals have stopped."

(Witness excused.)

A. D. ASPINWALL, recalled to stand, testified as follows:

By Mr. Alston:

I was sworn on yesterday. I have some informal figures, pencil figures, showing account 392, Train Enginemen, for the log train movement for the month of November, 1930, between Hines and Palatka, in order to be able to state the exact distribution. A total of $506.19 was distributed or charged to Account 392, Train Enginemen, for the month of November, 1930. The charges to account 401, Trainmen, for the same month for that same train is $562.86. I get these figures from the time tickets returned by the train and engine crew. The time tickets are supposed to be in the room.

Cross-examination.

Yes, these two items that I have just mentioned, account 392, totalling $506.19, and account 401, totalling $562.86 items, are items and totals which were included for the month in the total operating expenses for the Third division in these accounts. No, there was no adjustment made of the original expenditures to reach these totals of $506.19 and $562.86 other than what appears on the original return, as shown on the individual items.

"Mr. Alston: What was asked was, were these items chargeable to the log train between Hines and Palatka?" (Tes. p. 590.)

"A. They were made a part of the distribution, but we didn't make any special log train account."

They were included in the operation of that train. My original entry as shown on these particular items, makes these two totals included in the operation of the log train. I have the time sheets before me now. This 6.62 means $6.62 per hundred miles. It is not in the original time report. I get it from a schedule of wages, rules and regu- [fol. 1737] lations of conductors, as agreed to between the

Company and the organization of Railway Conductors. That sc-edule shows that a conductor for this 118 miles is paid at the rate of $6.62 per 100 miles. The rates of wages for the different classes of other employees, trainmen, engineers and firemen are also shown in this schedule of agreements between the organization and the Company; all rates used are shown in one of these four working agreements or labor contracts. This was a special compilation that I have just made that produced these two totals of $506.19 and $562.86. To my knowledge there is no original return made incident to the actual performance of the service on log train that showed these totals as I have given them. Five men are employed in the operatiin of that train moving from Hines to Palatka, engineer, firemen, conductor, flagman and brakeman. The engineer is paid $7.78 per 100 miles, the fireman $5.96 per 100 miles, the conductor $6.62 per 100 miles, and the flagman and brakeman earn $5.20 per 100 miles. The same number of men ride on the train employed going back from Palatka to Hines, and the same rate of pay obtains. The excess over 100 miles, is in the same proportion.

(Witness excused.)

Mr. McCaig, recalled to stand, testified as follows:

Direct examination.

I was on the stand yesterday. At the hearing on yesterday, in response to request on the part of Mr. Turnbull, I promised to produce here this morning the tax receipts covering payments in the State of Florida for 1929. I have them in my hand with the exception of one receipt, and in lien of that receipt I have produced the paid and cancelled check in favor of the City of Jacksonville. I offer these at this time. The receipt in the case of the City of Jacksonville is in the hands of our Attorneys, and in lieu of that I have offered the paid and cancelled check. The totals of these receipts show the totals, approximately, that I have testified to. There is some little difference there [fol. 1738] caused from credits to the accounts by reason of interest charge credits that have been deducted from the figures that I testified to yesterday, and these figures

will exceed the figures that I testified to slightly in my testimony on cross examination on yesterday. I find that I misinterpreted memorandum in connection with the 1929 taxes, which caused me to testify that we had paid in the year 1931 taxes for account of the year 1929, $99,885.05. I wish to correct that statement and say that that was representing an over accrual in the year 1929 that was adjusted in the year 1931, thereby reducing our accrual of taxes account for the State of Florida for the year 1931. In other words we applied an over accrual in 1929 for the payment of taxes due the State of Florida, account for the year 1931. We paid in 1931, paid in for account of year 1931, instead of account for year 1929, as I testified on yesterday. That covers all the corrections asked about. I would like to make this further addition to my testimony. On yesterday I testified that our accounts had been examined by a representative of the Income Tax Department of the U. S. Government for the year 1929, and that we had been called upon for additional taxes on account of that year. I was unable to give the amount of that difference at that time, and I would now like to state that the 60 day letter from the Commission- of Internal Revenue charges us with an original account for Federal Income taxes for the year 1929 of $94,150.63. This payment of this tax is being contested before the Board of Appeals, or rather the Income Tax Bureau, I mean the Board of Tax Appeals.

Cross-examination.

By Mr. Turnbull:

Here is a receipt that is duplicate #D-33327, for the month of April 1930, the receipt is signed by Ernest Amos, Comptroller, State of Florida, and headed "Amount Agreed Upon in Compromised Settlement in Account and Satis-
[fol. 1739] faction for All Taxes on Rolling Stock and Supplies due the State of Florida in the Counties of Florida through which the Atlantic Coast Line Railroad Company or its subsidiaries operated for the year 1929 as of the 40% basis of taxation fixed for 1929 by the State Tax Board of Railroads and other Property as per tax list $247,069.84." I cannot tell off-hand what was the original amount that was assessed. I do not know by what percentage our assessed taxes were reduced in this settlement

and accounting. Taxation is not under my direction. It is done in another department, and I cannot testify except as to the accruals and payments. (Tes. p. 595)

The accruals were first an estimate of our taxes, as I explained on yesterday, as we are required to make beginning in January of each year, and following on through. We undertook as far as possible to put in our accounts, or include in our accounts, 1/12 of the taxes payable on account of that year, based on the best possible figures we can get at the beginning of the year. On that basis we accrued our taxes through the preceding year basis, that is, what we paid the preceding year, plus any action of the Legislature that might have occurred between the previous assessments and the time we have the matter under consideration. We try to fully accrue them. It would be a general statement that if we did fully accrue the taxes that we thought, from the best evidence that we had before us, would be assessed by the State, and afterwards a compromise was made, and we paid in accordance with that compromise, it is probable that we paid much less than our accrual. I just actually stated the accruals over $100,000.00 and applied in 1931, and I have no doubt that that $100,000.00 is the amount you have there.

"Q. Would it be necessary in order to find out how much [fol. 1740] less the settlement and compromise adjustment of the taxes for 1929 for us to check over all of the different assessments that were made in the State of Florida against the Atlantic Coast Line?"

"A. I think we might save you that trouble, if it is a matter of any great moment. We have our Tax Agent here in Wilmington, and while I don't know how much trouble it will be for him to give you that information, he has it here and if given a little time to furnish it, could do so. I will state this, however, that my information as to accruals is based upon data furnished me by our Tax Agent, and at the time I made the 1929 accruals we very properly compared the amount of that assessment to which you referred, and valued it accordingly, which is in accordance with the requirements of the Interstate Commerce Commission.

There had been assessments made against the Atlantic Coast Line Railroad by taxing authorities in the State

of Florida for the account of the years 1929, 1930 and 1931 that are still in dispute. For instance in the year 1929 I am still carrying in my tax accrual account $44,000.00, regarding which I testified on yesterday, to cover taxes now in dispute in the State of Florida. In the year 1930 we carried, or there has been assessed against us by the State of Florida an amount of $82,000.00; for the year 1931, $100,000.00. Through our legal department we have obtained an injunction against the State of Florida, which will prevent them for the time being from forcing the payment of these taxes from us. Those matters are still in dispute, and the final outcome I am unable to give you, but, as stated before, we take into consideration in our tax accruals all the best available information we have as to our probable tax payments, that we will be required to [fol. 1741] make for the account of that year. We carry our tax accruals forward continuously until they are adjusted one way or the other. And when they are definitely determined we make the necessary adjustment by either debiting or crediting tax accruals according to whether we are under-accrued or over-accrued in the prior year.

"Mr. Alston: Right in that connection when you got through with 1929, as I understand it, you found that you had an over-accrual of some $99,000.00, but there is an order pending with the U. S. Government, and asking for income taxes of $94,000.00, which is in contest, as an additional assessment?"

"A. That Federal accrual is a separate transaction and is not involved in this transaction, in the matters that I have been discussing."

We have carried forward the over-accrual for 1929 for the benefit of Florida for the year 1931, and accrued our account for Florida, $100,000.00, less taxes in that year than there would have been had it not been for the over-accrual in the year 1929. These taxes that I have testified about in the State of Florida relate to the entire State and all of its sub-divisions; it is not limited to the Third Division of the Atlantic Coast Line. In making our property investment and operating income account we do not carry forward all of these accounts from year to year. According to established accounting principles all operating accounts are closed at the end of each year into profit and loss, and then new accounts are opened for the succeeding

year. No, we don't do that with our tax accrual. The tax accrual account is something set up to meet a liability, and it is never closed until that liability is discharged, or until [fol. 1742] it discloses itself, or until the facts are determined, which will enable us to make an adjustable entry. (Tes. p. 600.) It is money due for something and we are holding it subject to payment.

(Witness excused.)

L. B. INGRAM, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

I live in Wilmington, North Carolina; I am chief clerk to the Auditor of Freight receipts. I have made up a statement showing the log movements from Feb. 9, 1929, to March 31, 1931. This is what is heretofore known as Mr. Perrin's exhibit #61 or now introduced as Ingram exhibit #1.

(Objection by Mr. Ashby.)

I made up this exhibit from the way bills, the document on which the shipment travels; I have that before me. All of the records will be in a tremendous number of volumes for the period included in the statement, several hundred volumes. This statement is correct to the best of my knowledge and belief. I have carefully checked it in every sense of the word.

Cross-examination.

By Mr. Gutheim:

This entire compilation of these way bills giving rise to the totals on this exhibit #1 was done under my personal direction, not by myself, however. I couldn't very well explain the claim. It is our practice to check against the waybill, which is our basic document, any claim that may be filed. It would, therefore, be necessary to examine the papers in that particular claim to tell you by whom it was [fol. 1743] filed and what it was to cover. The reason why

practically all of these bills or a great many of them, as you open them up, have the weight changed from what it originally was is that in waybilling all traffic from a point at which we do not have track scales we weigh them by an estimated weight, and then when the car is actually scaled we of course use the scales weight and the changed weight is the scales weight, as a result of the scaled weight by the Southern Weighing Bureau's representative. When I show on this exhibit No. 1 weight as billed that is the corrected weight. We term as billed the weight provided in the movement of the traffic, which we deal with as billed weight. The consignee was billed on the car or the shipper is billed with revenue based on the rate resulting from the track scales. In this particular instance the agent at Homosassa, Fla., the forwarding agent, made out these waybills in the first instance. The correction is made either at the scaling point or by the destination agent. In some instances it is changed at the scaling point, in other instances by the destination agent. In no case did I make the original record, nor did the man who compiled the exhibits make the original record.

(Witness excused.)

W. S. LEDBETTER, sworn by the defendant, testified as follows:

Direct examination.

By Mr. Alston:

My name is W. S. Ledbetter, Auditor of Construction, Atlantic Coast Line Railroad Company. I live in Wilmington, N. C. I have been Auditor of Construction for five years. I was with the Atlantic Coast Line Railroad for six months before that. I have a certified copy from the Interstate Commerce Commission of pages 52 and 58 of the Tentative Valuation Report of the properties of the Atlan-
[fol. 1744] tic Coast Line Railroad Company, Central Railroad Company of South Carolina, and South Carolina Pacific Railway Company, Valuation Docket No. 930; the valuation of the property of the Atlantic Coast Line Railroad as shown by this certificate in Florida for the period covered by the report is $31,551,971.00 in the road in gen-

eral, and for equipment, $40,328,145, or for equipment alone $39,703,307.00, the other amount was for some other items; these other items are some general expenditures for interest during construction. On that equipment they allowed us this additional for general expenditures in the nature of interest during construction and engineering. That amounts to those two. This valuation of equipment is not allocated to Florida; that is for the system. The date of that valuation was June 30, 1917. That is the value they gave for Florida for everything except land, wholly on the used property. (Tes. p. 605.)

The valuation of that date for the road, not including land, plus the equipment allocated to Florida and the land in Florida was worked from 1922. We made our first compilation in 1922. We put down the basic figures and put down the date of valuation as 1922, and the first total we came to was in 1922. We have brought down the additions to this property since the date of valuation. The date of valuation is June 30, 1917. As to the basic valuation, I am testifying from a certified copy from the Interstate Commerce Commission's tentative valuation, the original of which is on file with the Florida Railroad Commission. As to property changes since the date of valuation, I have checked all of the accounts that we have here since 1917, and the additions to the tentative valuation that I have here have either been made by me personally or checked by me personally. In 1922, Mr. Lamb's exhibit #2 shows in [fol. 1745] investment in road and equipment in Florida, account 701, $63,306,135.81. That is correct except for a $2.00 mistake in addition. The result of this $2.00 mistake is that would be $156,769.85 added to Mr. Lamb's figures. In Mr. Lamb's exhibits it shows for the same item, investment in road and equipment, account 701, in Florida for the year 1926, $88,419,031.57. That is correct except $84,452.18 should be added for the same general reason. In 1927, Mr. Lamb's same exhibit shows the same item of the value of $90,558,415.21. That is correct except $167,706.52 should be added, on account of that same item. That item varies in the different years because we distribute the investment and equipment on a use basis, and sometimes the percentages vary. In 1928 the same item is shown as $91,735,345.27; that is correct except for that same item, this $162,028.49 should be added. In 1930 that same ex-

hibit shows that same item as $94,512,182.59; that is correct except that $164,144.94 should be added. In 1931 on that same exhibit of Mr. Lamb's (#2) that same item $94,949,-953.60 is correct except that $163,707.56 should be added. Each of those figures is correct except that the sum mentioned by me should be added into each year respectively. I say these figures are correct because I took the Commission's tentative valuation of June 30, 1917, certified copy of which has been filed, and of all the changes since 1917. I exhibit a book that was made up of original loose leaves; that is an additions and betterments record with the Atlantic Coast Line Railroad Company and goes over a period of several years. This happens to be the small accounts, "A", accounts of items under $200.00 that are in the book. It looks like there might be 800 sheets in this one volume. It is right that each sheet has contained thereon [fol. 1746] items of additions since June 30, 1917. And this particular volume is of the small items under $200.00. This other volume, marked on the back 101 to 3,499, is all of our additions and betterments; each job has a number and it is a record of additions and betterments made under authority 101 to 3,499 inclusive during that period, all made during that period 1917 through 1931. This other volume, very much like the others, and marked on the back 8,001 to 8,999, are the additions and betterments made under authority 8,001 to 8,999 inclusive. We have 23 volumes of these, some not as large as this. It has 1,000 accounts or 999 accounts to be exact, maybe a little more or less than 1,000 pages; some of the accounts have more than one page. The Interstate Commerce Commission has checked these accounts and anything they had an exception on they have given us, and we have credited our accounts to meet their objections. They have all been approved by the Interstate Commerce Commission. Each of these 23 books to which I have referred is about 15 inches long. We have four larger books, but 15 inches is about the size of this in length, while about twelve to fifteen inches is the size of these, and this one appears to be about ten inches high or nine inches high. These additions have the approval of our Accounting Department and myself and of the Interstate Commerce Commission's Valuation department. Based on the valuation, the tentative valuation of the Interstate Commerce Commission, the additions and improvements to

which I have testified, subject to the relatively small error which I have pointed out, the figures in line 2 in Mr. Lamb's exhibit #2, which is 'Investment in Road and Equipment Account 701''; are correct. I offer these in evidence as [fol. 1747] Ledbetter Exhibit #1 and Ledbetter Exhibit #2. (Tes. p. 610.)

(Objection by Mr. Ashby.)

The Atlantic Coast Line leases the Central Railroad Company of South Carolina, and the South Carolina Pacific Railway Co., and uses them and owns most of their securities.

Cross-examination.

By Mr. Gutheim:

I mention these figures covered in this certificate as figures taken from a tentative valuation by the Interstate Commerce Commission, as of Valuation Docket No. 930, from June, 1917. The Interstate Commerce Commission has not made a final valuation from that date. The Atlantic Coast Line Railroad Company has protested the tentative valuation. The Interstate Commerce Commission has not entered into any formal recapture of the excess income produced for the years beginning with 1920 with respect to the Atlantic Coast Line Railroad. There have not been any findings by the Interstate Commerce Commission of final values of the property of the Atlantic Coast Line in the year 1920 and since. None of these additions and betterments figures which I have testified to has any reference to such things as price trends; they are all on an actual cost since 1917. It comes down to this, that on this Lamb Exhibit #2, property investment for Florida is the figure tentatively found by the Interstate Commerce Commission as of value of June 30, 1917, plus additions and betterments as we have reported there since. To the roadway items the tentative valuation reported by the Interstate Commerce Commission shows the value of the property separately or segregated as to the various states in which the Company operates. We have taken in the specifications [fol. 1748] the Florida totals for the roads, except in this one thing, I added $804,168.00 for land that the witness

testified about on yesterday. That is the sum that he testified to as having been agreed by the Commission as the sum at which the land value in Florida should be placed. It is correct that the Interstate Commerce Commission made no allocation on equipment values as between states. We allocated the equipment to Florida on the use basis; the use basis is the locomotive miles in the State of Florida compared with the locomotive miles for the system for expenditures for locomotives and for car miles in Florida as compared with the system as to the expenditure for freight cars and for passenger car miles in the State of Florida as compared with the system for passenger equipment. These additions and betterments, the sums representing what has been added to the 1917 valuation, are all complete of themselves within Florida, except one job might run into another State, and then we would cut it off at the Florida line. For instance, a relaying job might go ten miles in one State and ten miles in another. No, we would not make the allocation as between States ourselves; we have a sworn statement to cover every such division we made on a basis of what was placed in the State of Florida. Yes, we make the allocations as distinguished from the Interstate Commerce Commission; it is made for the Atlantic Coast Line Railroad.

By Mr. Turnbull:

These 23 books embrace an investment in road and equipment that has been assigned to the State of Florida by Exhibit #2, separately and distinctly from the investment in road and equipment on the system, except for equipment. We made that allocation on the basis of use. All road items are set out clearly and separately stated. The road [fol. 1749] items are set out clearly and separately stated. In the equipment we have had to make some allocation in it for the State — Florida based on what we term use. The allocation does not appear in the books. By using ratios I could say from the books that I have actually offered here for inspection that item #2 embraces equipment cars contract. By just looking at the books and by looking at the accounts in the books I could not. The Interstate Commerce Commission has never made a re-valuation of the

Atlantic Coast Line Railroad; they are still working on the original, they have not completed it.

By Mr. Alston:

In the valuation return which I have testified to the contest on the part of the Atlantic Coast Line Railroad is to make those values higher; it is all on our side to make them higher, no one is trying to lower it. Yes, the Atlantic Coast Line is protesting these values on the theory that they are too low and claiming the values should be higher, substantially higher. (Tes., p. 615.) These figures which Mr. Lamb has used do not take into account that protest, but they take into account the tentative valuation, plus the agreed addition as to Florida, in the sum of $804,000. By applying a formula to these books I could tell the amounts or value of the equipment to be apportioned to Florida from these books; I mean the formula which makes up the use basis which I have described. By the application of that formula to the information on the books I can ascertain the value of the equipment to be apportioned to Florida for this purpose, and I have done that. These figures are reported from year to year to the interstate Commerce Commission. No, there is no opposition to them. Yes, [fol. 1750] these books show the additions and betterments since June 30, 1917. Up to that time we have started with the tentative valuation made by the Commission. It is right that the tentative valuation is not in dispute downward, it is in dispute upwards. One thing I would like to make a little clear. You asked if these figures were reported to the Interstate Commerce Commission. Figures for the mileage for the system are reported to the Interstate Commerce Commission and the figures as to the mileage in the State of Florida are reported to the Florida Railroad Commission and by using one against the other we get this ratio. The mileage in each state is not reported to the Interstate Commerce Commission. I recall now, that is correct, the mileage used for the system. The miles of road in each State is shown; that is shown in the report to the Interstate Commission. The miles for the system or locomotive miles for the system are reported to the Interstate Commerce Commission, and the locomotive miles for the State of Florida are reported to the Florida Commission, and that is the basis of my value.

By Mr. Gutheim:

"Q. In this respect is this correct, in respect to the value of the property of the Atlantic Coast Line: That is, your thought between you and the Interstate Commerce Commission, one in which you claim for a greater value than already set by the Interstate Commerce Commission, is due to your claim that the Interstate Commerce Commission has not included in the property of the Atlantic Coast Line certain properties that should be included, or is it a value that you claim because of higher prices?"

"A. I could answer that, but it would be from hearsay. The Chief Engineer handles that exclusively."

[fol. 1751] "Q. But you seem to be informed as to the details and that is what you testified to?"

"A. There are different kind of claims, one of property, that was never set up in the Atlantic Coast Line's property account, and another is the price level was too low, the Commission price level was too low."

I understand the price level is the biggest thing. I am informed in a general way as to the prices for labor and material and supplies that go into the construction of railroad property. There has been a decline. I don't know when it started, but there has been a decline for two or three years at least. There has been some decline. I don't know when it started or how much.

"Q. To the extent that the units of physical property remain substantially constant and the level of prices that apply to these units indicates the value that you would deduce from those units would be bound to decline, would it not?"

"A. We would use the ordinary cost of them; we couldn't adjust them for decline in prices."

"Q. Well, isn't your claim for a greater value as in the year 1917 through the year 1920 based in large part on the fact that the price trend greatly increased in those years as compared with 1914, the year in which the Commission fixed its prices."

"A. The claim we have with the Commission refers to the 1917 valuation."

"Q. And that is based in part on prices?"

"A. In part on prices."

"Q. Now, in the years when the price level instead of in-
[fol. 1752] creasing had decreased, in the year when the price paid has decreased, instead of increased, wouldn't a claim of that sort be bound to reduce the value?"

"A. If you work it on that reproduction cost, the change in price cost would change the cost of reproduction."

A declining price level would cause a decline, and I understand there has been a declining price level in recent years. The prices for those things which go into making up the Railroad use were not lower through the period beginning February 1929 and ending March, 1931 than during 1914. They were not as low as they were in 1917. And the figures that Mr. Lamb has used and which I verify to the extent to which I have been questioned, deal with prices as of June 30, 1914. In 1914 I was going to school, also in 1917. I have in mind a particular price level or particular price or particular index number of prices that enables me to give the answers I have given in respect to 1914, and 1917 and to-day. The one I have in mind is the one made up by the Presidents' Conference Committee on Railroads. (Tes., p. 620.) I couldn't answer for any particular year when that decline began. I know it has been declining some in the last few years, but it has never gotten down to the 100 basis. The 100 basis is 1914. The 1917 valuation was based on the 1914 prices.

(Witness excused.)

OFFERS IN EVIDENCE

"Mr. Alston: We introduce the following certificates from the Railroad Commission of Florida. The first is certified pages 702, 703, 704, *704*, 705, 706 and 707, being extracts from the Annual Report of the Atlantic Coast Line Railroad to the Railroad Commission of the State of Florida, for the year ending Dec. 31, 1922, as Lamb Exhibit # 24."

[fol. 1753] "Mr. Ashby: We object to that on the ground it is irrelevant and immaterial and incompetent and upon each of the several grounds which we objected to the previous exhibits offered by Mr. Lamb."

"Mr. Alston: We introduce another certificate from the Railroad Commission of Florida to the effect that pages

804 and 805 of the Atlantic Coast Line's annual report, are extracts from this report to the Florida Commission, as Lamb Exhibit # 25."

(Same objection by Mr. Ashby.)

"Mr. Alston: Next is certificate from the Railroad Commission of Florida as to pages 904 and 905 of the Annual Report of the Atlantic Coast Line to that Commission for the years ending Dec. 31, 1922, 1923, and 1924. Lamb Exhibit # 26.

"We next offer the Annual Report of the Atlantic Coast Line Railroad Company to the Railroad Commission of Florida dated Dec. 31, 1925, as Lamb Exhibit # 27.

"Next, the annual report of the Atlantic Coast Line Railroad to the Florida Railroad Commission for the year ending Dec. 31, 1926, as Lamb exhibit # 28.

"Next, copy of the annual report of the Atlantic Coast Line Railroad to the Florida Commission under date of Dec. 31, 1927, as Lamb Exhibit # 29.

"Next, copy of the annual report of the Atlantic Coast Line Railroad for the year ending Dec. 31, 1928, as Lamb Exhibit # 30.

"Next, copy of the annual report of the Atlantic Coast Line to the Florida Commission for the year ending Dec. 31, 1929, as Lamb Exhibit # 31.

"Next, copy of the annual report of the Atlantic Coast Line to the Florida Commission as Lamb Exhibit # 32, [fol. 1754] for the year ending Dec. 31, 1930.

"Next, annual report of the Atlantic Coast Line to the Florida Commission for the year ending Dec. 31, 1931, as Lamb Exhibit # 33.

"The papers which I have been describing as copies of the annual reports of the Atlantic Coast Line Railroad for the several years are not the Annual Reports, but they are copies of certain pages of these reports as shown by the certificate attached to each report. I offer copies of certain pages from these reports.

"We next offer certain copy from the Interstate Commerce Commission of pages 202, 203, 301, 302, 304, 306, 307, 308, 309, 312, 506, and 507 of the annual report of the Atlantic Coast Line for the year ending Dec. 31, 1922, as Lamb Exhibit # 34.

"We offer certified copy from the Interstate Commerce Commission of pages 506 and 507 of the Annual Report of the Atlantic Coast Line Railroad Company for the year ending Dec. 31, 1923, as Lamb Exhibit # 35.

"We offer certified copy from the Interstate Commerce Commission of pages 506 and 507 of the annual report of the Atlantic Coast Line Railroad to that Commission for the year ending Dec. 31, 1924, as Lamb Exhibit # 36.

"We offer certified copy from the Interstate Commerce Commission of pages 508 and 509 of the annual report of the Atlantic Coast Line to that Commission for the year ending Dec. 31, 1925, as Lamb Exhibit # 37.

"We offer certified copy from the Interstate Commerce Commission of pages 202, 203, 301, 302, 304, 305, 306, 307, 308, 309, 312, 508 and 509 of the annual report of the Atlantic Coast Line Railroad to this Commission for year ending Dec. 31, 1926, as Lamb Exhibit # 38.

[fol. 1755] "We offer certified copy of pages 202, 203, 301, 302, 304, 305, 306, 307, 308, 309, 312, 508 and 509, of the annual report of the Atlantic Coast Line to that Commission for the year ending Dec. 31, 1927, as Lamb Exhibit #39.

"We next offer certified copy from the Interstate Commerce Commission of pages 202, 203, 301, 302, 304, 305, 306, 307, 308, 319, 312, 508 and 509 of the annual report of the Atlantic Coast Line Railroad to this Commission, for year ending Dec. 31, 1928, as Lamb Exhibit #40.

"We next offer certified copy from the Interstate Commerce Commission of pages 202, 203, 310, 302, 304, 305, 306, 307, 308, 309, 312, 508 and 509 of the annual report of the Atlantic Coast Line Railroad to this Commission for the year ending Dec. 31, 1929, as Lamb Exhibit #41.

"We next offer certificate from the Interstate Commerce Commission of pages 202, 203, 301, 302, 304, 305, 306, 307, 308, 309, 312, 508 and 509 of the annual report of the Atlantic Coast Line Railroad to this Commission for the year ending Dec. 31, 1930, as Lamb Exhibit #42.

"We next offer certified copy from the Interstate Commerce Commission of pages 202, 203, 301, 302, 304, 305, 306, 307, 308, 309, 312, 508 and 509 of the annual report of the Atlantic Coast Line Railroad for year ending Dec. 31, 1931, as Lamb Exhibit #43.

"Mr. Ashby: I understand it is understood that our objection is being considered as entered after each one of these exhibits?"

"Court: Yes, sir."

"Mr. Alston: These exhibits are offered solely for the [fol. 1756] purpose of proving Mr. Lamb's figures in his exhibits 1, 2 and 3. I believe that is all of the exhibits. On yesterday we offered some exhibits by Mr. Warren, and those exhibits contained full copies of several reports from the Interstate Commerce Commission, and it seems to us that it is very unnecessary to have the full report, and would make tremendous volume, and copies of certain pages would do. What we would like to do is to have Mr. Warren withdraw those exhibits which have those full copies attached to them and to substitute photostatic copies of the pages which we claim to be related to the subject. The only purpose of that is to eliminate a tremendous amount of volume."

"Mr. Ashby: We have no objection to that, your Honor, and are entirely in accord that the photostatic sheets should be received as though it were an entire report. We do not waive, however, any objections that we would otherwise have to the entire report."

Mr. Alston: Mr. Davis makes the suggestion that instead of having photostatic copies of these papers that we can refer to a volume of the Interstate Commerce Commission in which reference is made, to the page.

"Now, from time to time on behalf of the Atlantic Coast Line Railroad we have tendered to the Court and opposing counsel the opportunity to inspect certain papers, records, etc., we desire that to apply to any papers and records which have been referred to since any statement of that sort has been made, so that it will include all papers, all records, and all data in the possession of the Atlantic Coast Line Railroad or the control of it, to which reference has been made."

There being no further testimony at the time, the hearing was adjourned. (Tes. p. 625.)

[fol. 1757] Hearing before Hon. Horace M. Holden, Special Master, September 26 and 27, 1932. Present as before, with the exception of Mr. T. T. Turnbull.

Mr. Alston: May it please the court at this time I offer in evidence certified copy of a report and order of the Interstate Commerce Commission in the case of Georgia Public Service Commission v. Atlantic Coast Line Railroad Company, its docket number 18364, decided July 5, 1932.

(Filed as A. C. L. Exhibit No. 1.)

Mr. Adair: If the court please, I should like to offer objection to the proferred documents on behalf of the claimants all and singular to all documents and evidence attacking the reasonableness, justness and lawfulness of the Cummer scale. In addition the claimants offer the following objections severally: First, that the Interstate Commerce Commission has no power to make any orders fixing rates of any kind except prospective orders, that is, orders applicable only to the future; second, that the report and order of the Interstate Commerce Commission upon its face purports to relate only to the future, that is to say, to fix and determine rates to be observed in the future, and has no relation to the rates that were charged under the unlawful order of the Interstate Commerce Commission during the two year period ending in the Spring of 1931; third, that upon the coming down of the opinion in the Supreme Court of the United States in this very case and before the coming down of the mandate, the Atlantic Coast Line Railroad Company sought to stay the mandate of that court until the Interstate Commerce Commission should have acted further in the proceedings in docket number 18364 [fol. 1758] and assigned among other grounds the fact that the claimants would make large claims for reparations so-called against the Atlantic Coast Line Railroad Company for shipments moving under the rate prescribed by the condemned order of the Interstate Commerce Commission, and the Supreme Court of the United States promptly denied that motion; fourth, that the same subject matter was set forth in several motions of the Coast Line before the three judge court in this very restitution proceeding upon the theory that the determination by the Interstate Commerce Commission in the reopened proceedings might affect these restitution proceedings, but in every case as we read the orders of the three judge court, that motion has been determined against it; five, that the report and order of the Interstate Commerce Commission are immaterial, irrelevant and incompetent to the issues here involved; and,

sixth, that the report and order of the Interstate Commerce Commission are invalid and unlawful invasions of the state rates and ought to be and will be set aside in due course in proceedings to that end.

Mr. Alston: Your Honor, there was an order making the effective date of the first order of the Commission dated the fifth of July, on or before September 15th. I have not that order with me. May I state that into the record?

Mr. Adair: Yes.

Mr. Alston: We then offer it in evidence.

(Filed as A. C. L. Exhibit No. 2.)

Mr. Adair: I offer the same objections which we interposed to the main report and main order. I will try to supply you with a copy.

[fol. 1759] The Court: That will be marked Exhibit 2.

Mr. Alston: We offer in evidence a certified copy from the Interstate Commerce Commission, Bureau of Statistics and numbered OS-A of December, 1931, and 1930, of freight service performance. I offer that, if I may do so, for the purpose of completing some of the data which Mr. Lamb has heretofore offered. This exhibit is offered for the purpose of bringing into the record some statistical data covered thereby, some of which is not in the evidence heretofore given by Mr. Lamb, and for the purpose of making the record complete as to parts of his evidence.

(Filed as A. C. L. Exhibit No. 3.)

[fol. 1760] J. W. Perrin, previously sworn, recalled by the Claimants for further cross-examination.

I have been connected with the Atlantic Coast Line Railroad Company about forty years, practically all that time in connection with the traffic department. The rates of my company for the transportation of all property are not identical. I could not possibly answer even approximately how many different rates we have for the transportation of property over our railroad in carload quantities. There are many more than a thousand, and they are all at different levels. Many of them are much higher than the rates for the transportation of logs in carloads, and a great many of them are higher than the level of the so-called

Alabama log scale, the scale that was prescribed by the Interstate Commerce Commission. It is more economical to transport a given quantity of stuff in heavily loaded cars than in lightly loaded cars. I would not say exactly when our short log rates applicable to intrastate traffic was initiated in Florida, but it has been several years, more than five years. That rate was prescribed by the Florida Railroad Commission, and we have been transporting logs under it ever since.

The next to the last column of Mr. Warren's Exhibit No. 9, contains a mileage scale of rates on logs less than six feet in length, stated in cents per car of forty thousand [fol. 1761] pounds, excess in proportion. Those are the short length log rates prescribed by the Florida Railroad Commission and applied on the Atlantic Coast Line Railroad Company in Florida on short length logs. In single car units it does not cost any more to transport short length logs than long length logs. The rate is published in a flat sum per car and in Mr. Warren's exhibit 1, I have just examined, it is stated in cents forty thousand pounds excess in proportion. The Cummer scale is also published at so much per car, per car of fifty thousand pounds excess in proportion and our Class P is published insofar as application to logs for 170 miles and over as being per car of thirty thousand pounds for fixed amount excess in proportion. We have three scales; one, thirty thousand pounds, one, forty thousand pounds, and one, fifty thousand pounds minimum. I have not examined whether for distance all over ten miles our Class P rate and short log rate is identical except that one has a minimum weight of forty thousand pounds, and the other a minimum weight of thirty thousand pounds, but my recollection is that the short log rate is less than the Class P rate for the same minimum. I would say for revenue results the Cummer Scale is very different for fifty thousand pounds minimum. In minimum per car charged, I would say it is very much less. The Cummer Scale applied to fifty thousand pounds is less than the Class P rate applied to thirty thousand pounds and the short log rates applied to forty thousand pounds. I think there is considerable difference between the Cummer Scale transporting fifty thousand minimum [fol. 1762] as compared with the short log scale trans-

porting forty thousand pound- minimum for the same distance. My recollection is that that was referred to in a previous hearing and it is roughly in the ratio of about three to two. The short log rates are in a ratio to the Cummer Scale of about two to three based on a hundred pound basis. (Page 10-A of testimony.) Class P is a carload rate that applies on various and sundry commodities according to the Florida classification. There are not very many other things than logs that take Class P rates. Formerly, there were a good many but practically all of them have been eliminated. Many of them have been eliminated by established commodity rates or changed classifications in other respects. Class P is a commodity scale. The commodity rates are generally less than strictly class rates as from 1 to 12 inclusive, but these carload rates as expressed by Class P for instance, are substantially and atually commodity rates. Class P does not now cover brick, gravel and stuff of that sort. Recently a commodity scale was put in on brick, sand and gravel. This rate is possibly a little lower than the Class P. The Florida rate as prescribed by the Interstate Commerce Commission is higher. It is higher for the Southern territory. Lumber in Florida I think is still in Class P. Lumber rates are ordinarily higher than log rates. I would not be able to say whether we had ever applied to the Florida Railroad Commission for a change in the level in the short log rates. I do not know the circumstances under which the Commission prescribed those rates. It was prescribed when I did not have jurisdiction over Florida.

[fol. 1763] STIPULATION

It is agreed by the several parties, the claimants on the one hand and the respondent on the other, that Florida Classification No. 7 issued by E. H. Dulaney, agent, in the Supplement dated September 10, 1928, effective October 20, 1928, being supplement No. 13, contains the following statement, effective October 10, 1928, cancelling item 16, page 52 of Classification: "Item No. 8. Logs except cedar logs, C. L., minimum weight 30,000 pounds (Non-applicable for account of the Atlantic Coast Line Railroad on logs,

carload, where commodity rates have been published and bear reference to Interstate Commerce Commission's order in Docket 18364) Class P." The same provision appears in the supplements issued by Dulaney, agent, to that classification numbered and dated as follows: Supplement 15 issued October 8, 1928, effective October 10, 1928; Supplement 18 issued December 7, 1928, effective December 10, 1928; Supplement No. 19 issued January 22, 1929, effective March 1, 1929; Supplement No. 21 issued February 18, 1929, effective April 1, 1929; Supplement No. 22 issued February 23, 1929, effective April 1, 1929; Supplement No. 24 issued March 19, 1929, effective April 28, 1929; Supplement No. 25 issued March 22, 1929, effective April 28, 1929; Supplement No. 26 issued April 16, 1929, effective May 25, 1929; Supplement No. 27 issued April 25, 1929; effective June 1, 1929; Supplement No. 28 issued July 1, 1929, effective August 10, 1929; Supplement No. 29 issued July 30, 1929, effective September 1, 1929; Supplement No. 30, issued September 21, 1929, effective October 30, 1929; Supplement No. 31 issued October 14, 1929, effective November 17, 1929; Supplement No. 32 issued February 20, 1930, effective April 1, 1930; Supplement No. 39 issued February 16, 1931, effective April 1, 1931; Supplement No. 41 issued May 18, 1931, effective June 25, 1931; Supplement [fol. 1764] No. 42 issued June 26th, 1931, effective July 1st, 1931.

Mr. Dulaney is agent for the Atlantic Coast Line Railroad Company and he was agent during 1928, 1929, 1930 and 1931. The Florida classification as prescribed by the Florida Railroad Commission and the publication of that classification to which you refer is issued by E. H. Dulaney, as the publishing agent for all of the railroads of Florida. It segregates the different classes of freight moving within the State of Florida as between the several classes and other provisions of the classification. Upon examining these supplements I can only say it looks like they were filed by Dulaney on behalf of the several carriers, including the Atlantic Coast Line Railroad Company. I have no way of knowing but I think there is no doubt that they are the tariffs that Dulaney filed.

Supplement No. 13 introduced as Claimant's Exhibit No. 1.

Redirect examination.

By Mr. Alston:

Agent Dulaney was purchasing agent for all railroads in Florida and the publication of the Florida classifications and exceptions thereto. The classification of freight in Florida being published by the Florida Railroad Commission. If it had not been for the statement reading as follows, "Non-applicable on account of Atlantic Coast Line Railroad on logs, carload, where commodity rates have been published and bearing reference to Interstate Commerce Commission's order in Docket No. 18364" (P. 15A of testimony), there would have been confusion on the part of the agents of the Atlantic Coast Line Railroad Company *Company* in the possible application of Class P rates on logs as against rates issued by the Atlantic Coast [fol. 1765] Line Railroad Company and contemporaneously in effect in compliance with the order of the Commission in Docket 18364; consequently the Class P rates in these supplements were applicable for account of all lines not specifically excepted, or in other words, were applicable to all lines in Florida not specifically excepted, or were applicable to all lines in Florida except the Atlantic Coast Line Railroad Company and the exception was necessary because of the Order of the Interstate Commerce Commission to apply something else. The order of the Interstate Commerce Commission has been set aside since that publication.

Q. Suppose that the order had been set aside and the Cummer scale of rates had been suspended, what would have been the applicable rate?

Objection by Mr. Adair.

A. My view of it is that the Florida Railroad Commission has not specifically applied any rate in Florida for the Atlantic Coast Line except the Class P rate on logs. When the Cummer scale was filed with the Florida Railroad Commission and applicable for the account of the Atlantic Coast Line Railroad Company *of* logs moving to 170 miles, and that displaced the application of Class P rates in that the tariff *and* went into the record of the Florida Railroad Commission as the rates of the Atlantic Coast Line Rail-

road Company. I believe that when the Florida Railroad Commission suspended the Cummer scale of rates without specifically providing something else other than a Class P rates there was nothing else except the Class P rates assuming that the Interstate Commerce Commission had not made such provision. Class P rates applied in Florida [fol. 1766] on logs only over 170 miles. Short logs are what are used in Florida for the manufacture of crate materials. It is considered a lower grade of logs in as much as they frequently consist of the short length of trees from which longer logs have been cut. In other words, there is the theory that in shipping short length logs there is saved material that otherwise would be wasted in the woods. The rate on short length logs is less than the Class P rates on long length logs but substantially higher than the Cummer scale rates. The Atlantic Coast Line Railroad Company thought that this order which was issued August 2, 1928 covered both kinds of length and it undertook to apply the classification to both classes of logs. Then the Interstate Commerce Commission entered it- supplementary order stating that it did not apply to short length logs. I have testified as to the difference in the cost of handling materials loaded heavy and handling materials which do not load heavy. That difference is the minimum for the carloads for short length logs and the carload for long length logs. That does not necessarily mean a different weight of actual loading. In fact, loading of the logs moving more than 170 miles and loaded in the same way that logs that move for short distances and subject to a minimum of fifty thousand pounds. In other words, a minimum of fifty thousand pounds applies for short distances and thirty thousand minimum for short distances. On distances shorter than 170 miles there is a minimum of fifty thousand pounds. We are not speaking [fol. 1767] of short length logs but short hauls against long hauls. The loading would be the same notwithstanding the difference in minimum carload. Throughout all of our study there was no loading of any of these logs that would average only thirty thousand pounds a car. A carload of logs is forty thousand pounds and on the long length logs be a very small load of logs. Customarily, the average car of short logs would be within five or ten thousand pounds of the loading of the longer length logs. For more than 170 miles the carload minimum weight on short length

logs is forty thousand pounds and on the long length logs is 30,000 pounds. The minimum for the long length logs after passing 170 miles is lower than the minimum carload weight on short length logs.

The Florida Railroad Commission, in order to reduce rates on short logs made the same Class P rate apply on forty thousand pounds. In other words, they reduced the revenue per car by making the same rate apply for forty thousand pounds as formerly for thirty thousand pounds. When you consider the difference in the loading of the carload minimum and the rates altogether, then the 170 mile bracket, the rate on short length logs was very substantially higher than the rates on the Cummer Scale logs.

Recross-examination.

By Mr. Adair:

Class P rates which apply to over 170 miles insofar as long length logs are concerned had minimum weight of thirty thousand pounds per car excess in proportion. The Cummer Scale is substantially lower than the short log scale.

Q. The Cummer Scale came along and has a minimum weight of 50,000 pounds for a fixed distance excess in proportion and is a slightly lower rate than the short log rate and Class P with their minimum of thirty thousand to forty thousand pounds, is it not?

[fol. 1768] A. The figures will show whatever it is.

Q. The principal difference in revenue produced is due to the minimum weight per car, is that not true?

A. I suppose you refer to actual results in revenue?

Q. Yes.

A. As a matter of practice a thirty thousand pound load does not cut any figure at all.

Q. Have you figured what would be the result based upon the minimum car you get?

A. The revenue results would be more nearly the same but in practice the thirty thousand pounds as a minimum has practically no use because they are always loaded around fifty thousand pounds. There is a difference between loading heavy and light. The Cummer Scale was installed for all movements in 1914 but it was not applicable to short logs. As far as I know the Commission has never

represcribed Class P for distances under 170 miles but they affirmatively suspended the Cummer Scale. It has never specifically reinstated Class P. (P. 20A of testimony.)

It is correct that Class P has never been actually applied for transportation of long length logs under 170 miles at any time since 1914. Class P, before the Cummer Scale went into effect did have application to distances under 170 miles.

By Mr. Alston:

The Class P rate did apply to all haulage of logs including the brackets up to 170 miles when in effect and it has included all brackets beyond 170 miles after the Cummer Scale of rates went into effect. The rates which were in effect on logs in Florida intrastate over Atlantic Coast Line Railroad were prior to 1914, Class P rates for all mileage brackets. It is right that beginning with 1914 the Cum- [fol. 1769] mer Scale of rates went into effect for mileage brackets less than 170 miles and the Cummer Scale of rates superseded the Class P rates to the extent that the Class P rates are applicable.

Q. When the Interstate Commerce Commission rates were put into effect February 8th, 1929, intrastate in Florida, the Atlantic Coast Line Railroad claim was that that rate superseded the Cummer Scale of rates. Was that so?

A. We did not claim that but we recognized the order of the Commission and put it into effect.

Q. You filed your schedules with the Interstate Commerce Commission and the Florida Railroad Commission to that effect?

A. Yes, sir.

Q. Then the Cummer Scale of rates was suspended by the Florida Railroad Commission Order No. 990?

Objection by Mr. Adair that the order speaks for itself.

A. Yes, sir.

Q. In the circumstances I have mentioned, that is, if the Cummer Scale of rates were suspended and the Interstate Commerce Commission's rates were not lawful, state what in your opinion as a traffic expert would be the proper rate for transportation of logs intrastate in Florida.

Same objection by Mr. Adair.

A. If I had been an agent of the Atlantic Coast Line, with the knowledge I had of the provisions of the tariff, considering the fact that there had been a definite suspension of the Cummer Scale and considering the fact that the Supreme Court had nullified the I. C. C. Scale, I would have applied the Class P rates. My view of it is that in [fol. 1770] the circumstances of the illegality of the order of the Interstate Commerce Commission fixing the intrastate rates for transportation of logs over the Atlantic Coast Line in Florida and the suspension of the Cummer Scale of rates by the Florida Railroad Commission the lawful applicable rate is the Class P rate. I think that the rate in effect in 1914 and cancelled and superseded by higher rates and that rate in turn cancelled and superseded by another rate can be restored without being republished. Just keep in mind that this is an intrastate question regardless of the tariff. If your tariff does not conform to the provision of the Florida Railroad Commission then it has no application at all. My view of it is this. That the Florida Railroad Commission had never suspended Class P rates. They had suspended the Cummer Scale affirmatively and not having taken any action to change the application of the Class P rates, I think if I was agent billing shipment of logs I would apply Class P. I don't know of any other circumstances under which we would be permitted to charge a rate that was not published. We frequently charge rates not published on intrastate traffic provided you don't charge anything higher or lower than prescribed by the State Commission with no tariff authority for it at all except the Order of the Commission, which is not published. The reason I think Class P rate would apply here was because it was prescribed by the Florida Commission in 1914. Then the Commission permitted it to be superseded by the Cummer Scale. [fol. 1771] The Commission permitted the Cummer Scale to be superseded by the Interstate Commerce Commission Scale so that there were two rates in effect since the Class P rate applied. I think it is a logical conclusion to go back to the rate authorized in 1914 for this reason. There are only three scales that could be considered. The Florida Commission had suspended the Cummer Scale and the Supreme Court had suspended the Interstate Commerce Commission Scale. There was only one other to apply and that

was Class P. There had not been any direct action of suspension.

By Mr. Adair:

I don't think the length of tie changes anything. The Cummer Scale went into effect in 1914. The Florida Railroad Commission accepted the Cummer Scale and it became the intrastate rate on the Coast Line for 170 miles and under. There was no other scale in effect. For fifteen years that scale stayed in effect and meanwhile, Class P was not published as applicable to long length logs in Atlantic Coast Line tariffs. The Florida Commission has never specifically dealt with Class P at all. It is correct that the Commission never specifically restored Class P for application to long length logs under 170 miles on the Coast Line. (P. 25A of testimony.)

I would have to apply Class P after the entry of the order of the Florida Railroad Commission for I would have nothing else to apply. We would not apply Class P while the Cummer Scale was in effect. We applied the Cummer Scale. While the order of the Interstate Commerce Commission was in effect I applied the scale prescribed by the order of the Interstate Commerce Commission. That order of the Interstate Commerce Commission was my warrant for applying it. The Interstate Commerce Commission Scale and the Class P scale are the only ones left to apply. [fol. 1772] Then I would apply Class P by the process of elimination, notwithstanding that two other rates had superseded it. I am applying Class P which has not been used for fifteen years. I would say that Class P was prescribed a good many years ago. August 16, 1914, is too late. This statement that you hand me seems to be just dealing with rates and carloads, Class P. There was no specific action with regard to lumber rates. In fact, Class P rates were never filed for many, many years on lumber in Florida. The Florida Commission made the log rates and applied Class P on lumber and logs but the difference was in the minimum per car. The only difference is that lumber was about twenty-four thousand pounds and logs thirty thousand pounds.

By Mr. Alston:

Generally, Class P rates apply over all roads in Florida although I think the Seaboard had some rates applicable

to them. Yes, Class P rates did apply in the beginning and they now apply on cars from all, or most all, points in Florida. It does not apply over most of the lines because the Atlantic Coast Line is probably operating close to half of the lines in Florida over 170 miles. I think in some situations it applies over the Seaboard Air Line but in others it doesn't. The Seaboard Air Line has some special rates stated in dollars and cents per thousand feet instead of per car. It applied until recently over the Florida East Coast. Recently, I think the Florida East Coast has endeavored to meet truck competition. I wouldn't say that every one of the railroads in Florida cut log rates for dis-
[fol. 1773] tances under approximately 170 miles which are substantially lower than the Class P rates. Of course, we have had some before, doubtless we did, and the Seaboard has some rates per thousand feet and in the Southern and G. F. & S. I think there is Class P. That is nothing specific, except the rate of the Seaboard. It is a mileage scale up to a certain distance. If there is no scale it is true that the Class P rate applies. To put it differently, the Florida Commission has never prescribed log rates for any line in Florida other than Class P rates, except they prescribed rates for the Seaboard up to a certain distance. I do not think the whole length of the line. I am not familiar enough to say to what extent. It is true that railroads in the Mississippi Valley and the Southwest and Southeast have, within the last few months, substantially reduced carload rates on logs in an effort to meet truck rates. I do not say they have reduced them to the level of the Cummer Scale but they have reduced them substantially.

(Objection by Mr. Alston.)

I am not prepared to say whether these reductions were substantial. We did not make them. I have heard that in Montgomery that within the last few weeks some lines were making reductions to meet truck competition for relatively short distances where trucks could operate. I should not think that these reductions covered distances up to 100 miles.

Motions made in the Supreme Court of the United States of the Georgia Public Service Commission and Atlantic Coast Line Railroad Company, respectively, praying stay of the mandate of the Supreme Court of the United States

[fol. 1774] in the case, and the certified copy of the Order of the Supreme Court of the United States denying such motion, introduced as Claimant's Exhibits 2, 3 and 4.

Tariff supplement No. 17 to freight tariff No. 3155-F of St. Louis-San Francisco Railway, effective August 23, 1932, introduced as Claimant's Exhibit No. 5. (P. 30 A of testimony.)

Objection to tariff by Mr. Alston on the ground that the rate set up by the tariff became effective in August 1932, about eighteen months after the period under inquiry.

Tariff I. C. C. No. A-10448, Southern Railway system introduced as Claimant's Exhibit 6.

(Same objection by Mr. Alston.)

(Mr. Parrin continuing to testify.)

By Mr. Alston:

I have been looking over the St. Louis-San Francisco Railway's supplement No. 17 to freight tariff No. 3155 F. The rates prescribed there are higher than the Cummer Scale.

By Mr. Norman: For 25 miles and less the rate is $12.00 in this St. Louis-San Francisco tariff, whereas, the Cummer Scale carries a rate of $12.00 for a much greater distance. I understand it that that $12.00 in that tariff is for any weight of logs that may be put on cars.

By Mr. Alston:

Q. Whereas, the Cummer Scale up to ninety miles is $11.50. The Cummer Scale is substantially lower for the two distances, being $8.55 up to forty miles; $10.50 up to sixty miles and $11.50 up to ninety miles. Is that difference in weight of much importance in loading cars?

[fol. 1775] A. "It would be under that tariff, although with any excess loading it would break down the car. In other words, the extent to which you load logs on the car depends upon the carrying capacity or sustaining capacity of cars. Our cars when fully loaded weigh on the average of 60,200 pounds."

The scale in the St. Louis-San Francisco tariff applies per car no matter what the weight of the load. The actual weight of the load could not be much more than seventy

thousand pounds because our cars fully loaded average 60,200 pounds. On that basis the Cummer Scale is still lower than this additional rate. The rates in the Southern tariff I. C. C. A-10448 are milling in transit rates and are applicable only when the lumber is reshipped by the Southern Railway. The scale of rates on the distance basis appears to be the same as in the St. Louis-San Francisco Railway tariff. Those rates are for distances up to 100 miles. At fifty miles and over twenty-five miles, the rate appears to be fifteen dollars. Under the Cummer Scale rates fifty miles would be $10.50 for fifty thousand pounds. The cost for seventy thousand pounds under the Cummer Scale would be excess over fifty thousand in proportion. On seventy thousand pounds under the Cummer Scale of $10.50, the charges would be $14.70 and on the same weight under the St. Louis-San Francisco or the Southern Railway tariff, the charges would be fifteen dollars. Those rates are for under one hundred miles. I do not know what the average weight would be on logs handled under these Western tariffs but I do know they could not exceed [fol. 1776] seventy thousand pounds. I do know from experience that where you have carload rates applying the shipper generally loads to capacity. In explanation of these rates they are of very recent publication. The same proposition by the same mill interest was made to every line in the Mississippi Valley and they also made this proposition in Montgomery, Alabama. We were asked to do the same thing, to establish this same scale of rates that the Frisco and Mobile and Ohio and Seaboard Air Line established without regard to the amount of logs they could put on the car and without putting any limit on the loading. We think this is a bad principle of rate making and we would not establish rates as low as those that will be accepted as a strictly transit proportion in order to secure logs against truck. The adjustment of this traffic by the Seaboard, Frisco, and Mobile & Ohio, has been to take logs away from trucks within ordinary trucking distances. They were, of course, the individual acts of these lines. The Interstate Commerce Commission had nothing to do with the making of the rate. They were not established as reasonable rates but were put there to meet motor truck competition. On the other hand all rates used by my exhibits were approved by the Interstate Commerce

Commission as reasonably compensatory. In some cases they were approved as reasonable and in other cases they were prescribed rates. All rates in my exhibits were approved or prescribed by the Commission. (P. 35A of testimony.) The railroads themselves have voluntarily put in these new low rates. The Seaboard Air Line, Mobile & Ohio and 'Frisco in order to move the traffic, to secure it from the trucks. I don't think it enters into this that it is one of the primary laws of rate making to prescribe [fol. 1777] what the traffic can and will bear. It is not a question of what the traffic will bear. Where these railroads have put in these new rates, they have done so in hopes that they will be able to move traffic that has been going elsewhere. Traffic that has been going by truck. The Southern Railway rate and the 'Frisco rate is a milling and transit rate. It is true that milling and transit rates are always lower. As far as the Wilson Cypress Company is concerned, the Atlantic Coast Line Railroad Company, unfortunately does not get the outbound traffic of lumber. There is nothing that ties the outbound traffic over the Coast Line. That rate under the Cummer Scale applies whether we get the outbound traffic or not. The Wilson Cypress Company mill is served by two railroads. We participate in all of the traffic but the fact that the Atlantic Coast Line has tracks in the mill does not mean we get all of the traffic. I am afraid we get a very small part of the outbound traffic of the Wilson Cypress Company. It is a mistake to say that we get substantially all of it. The Atlantic Coast Line has much log traffic in Florida all over the State but we don't make rates to meet the trucks for the reason that we believe that the truck competition rate is lower than we can afford to operate on and because in order to meet truck competition it is not necessary to cut rates. The Atlantic Coast Line does not divide truck competition rates with other railroads. Other lines apply the same rates and divide between two, three and sometimes four railroads. We think this traffic is useless. We have felt that as far as revenue is concerned, that if you have to meet truck rates [fol. 1778] on logs you are going down to the level where the result of profit is very slim. It becomes too small to make anything out of it. The Cummer Scale was voluntarily made for the purpose of moving the traffic.

Certificate of the Interstate Commerce Commission and appended copy of document entitled, "Classification of Operating Revenue and Operating Expenses of Steam Roads" and another certificate from the Secretary of the Interstate Commerce Commission with document appended, entitled "Accounting Bulletin No. 15, Interpretations of Accounting Classifications prescribed by the Interstate Commerce Commission for Steam Roads," introduced as Claimants' exhibits 7 and 8.

It was stipulated by all parties to the cause as follows:

"The Atlantic Coast Line Railroad Company brought its bill in equity in the District Court of the United States for the Northern District of Florida against the Railroad Commissioners of the State of Florida, filed February 7, 1929, copy of which is in the record of this case (having been introduced as a part of the record of the case in the United States Supreme Court known as Original No. 19, October term, 1928—part of exhibit 9). This bill was presented to Judge William B. Shepard, Judge of the said court in Miami, Florida, on February 7 and 8, 1929, for restraining order and injunction.

"The Florida Railroad Commissioners appeared in said cause at said hearing and were represented by Fred H. Davis and H. P. Adair, Fred H. Davis being the attorney general of Florida and H. P. Adair assisting him. Judge Shepard, on motion of the Railroad Commissioners of Florida, dismissed that bill at said hearing.

[fol. 1779] "The Atlantic Coast Line Railroad Company then offered petition for mandamus in the Supreme Court of the United States, being No. 19, October term, 1928, for the purpose of having Judge Shepart call together two other judges for the trial of said case. Mr. Adair was familiar with the response filed by Judge Shepard to the Atlantic Coast Line's motion. His recollection is that he assisted in the drawing of the response and his recollection is also that he did assist in the preparation of Judge Shepard's amended return which was filed in the same case and which return set up Order No. 990 of the Florida Railroad Commission which was entered on April 20, 1929. Mr. Adair is familiar with Order No. 990 and had a hand in preparing a draft of it. It is Mr. Adair's recollection that the certified copy of that order was made at the direction of the Attorney General of Florida."

LEWIS G. THOMPSON, sworn by the claimants, testified as follows:

Direct examination.

By Mr. Ashby:

My name is Lewis G. Thompson. I reside in Tallahassee, Florida. I am Secretary of the Florida Railroad Commission which position I have occupied since September 1917. As such Secretary of the Florida Railroad Commission I am in charge of the books and records and have been during the time that I have been Secretary. I keep records of the Florida Railroad Commission dockets, of notices of hearings upon orders of the Commission and I also keep a docket of the orders of the Commission. I keep records of the Florida Railroad Commission documents. I recall [fol. 1780] order No. 990 of the Florida Railroad Commission which was entered April 20, 1929 and which is here in evidence. I recall order No. 979 which is here in evidence and which was entered January 30, 1929. No hearings were had or notice given in connection with either of these orders. There was no notice given of any matters contained in these orders. (P. 40A of testimony.)

I have examined the records of the Florida Railroad Commission in connection with my personal knowledge of this matter and I am now testifying both from my personal knowledge and from the records. These orders were entered ex parte.

Objection by Mr. Alston.

Cross-examination.

My Mr. Alston:

Order 990 was issued as a result of proceedings in the Federal Court for the Northern District of Georgia. The purpose of the order was to conform to the decision of the Superior Court and to obey the mandate of that Court in so far and in so long as the mandate of that Court was effective.

It is said here that Order No. 979 be and the same is hereby suspended so long as certain decrees of the United States District Court for the Northern District of Florida

shall remain in force and effect, unmodified and unreversed. I don't think it meant just that. I think it meant what it said there in so far as the order of the Court went but certainly the railroad Commission of Florida could not change its own rates without a public hearing and notice. I only know by the recitation of the order that Judge Sheppard held Court in Miami at that time. Judge Sheppard lived [fol. 1781] at Pensacola. It is about four hundred miles to Jacksonville and about four hundred miles to Miami and about 212 miles to Tallahassee. This was certified on the 20th day of April, 1929. That was the day it was passed. I certified it at the instance of the Commission. Mr. Davis, the Attorney General, was there in the building at that time. He took part in the preparation of the order. My recollection is that it was prepared by the Commission in conjunction with the Attorney General. I believe that Mr. Adair had some knowledge of it but I do not recall that he was there. I couldn't say where it was printed, whether in Jacksonville, Miami or Tallahassee. Most of the printing is done in Tallahassee by local firms and sometimes we have briefs printed in Washington. I could not say whether at the time this order No. 990 was introduced or filed there had been on file with the Florida Railroad Commission the tariff showing change in the rates to correspond with the Interstate Commerce Commission Order, because I do not keep the tariffs. It was kept by Mr. Tench, the rate expert who is in charge of filing. I have nothing to do with the filing of tariffs. I have no definite recollection of what was done with this order since I certified it but the customary proceeding would be to send a copy to all parties affected by the order. I could not say definitely that I sent a copy to the railroad companies or that I gave a copy to Judge Davis, but Judge Davis evidently did receive a copy. He assisted in the preparation of it. I could not say whether Judge Sheppard was in Miami or in Tallahassee at that time. I do not recall him being there. [fol. 1782] Judge Davis is now on the Supreme Court of Florida but he was Attorney General at that time and he was then advising the Florida Railroad Commission. Mr. Turnbull was special attorney assigned to the railroad Commission. I hardly think they would advise the Commission to do an unlawful act. They are men of excellent character. I would have to refer to the record to see when

Order No. 979 was issued. It was issued under the same circumstances as the other Order No. 990 sometime prior thereto and under the same circumstances, both having been issued without notice of hearing and the purpose was to clarify the situation in order that the rates might be known and furthermore to conform to the ruling of the Court. The purpose was that the rates involved in this proceeding after Order No. 990 went into effect might be known, the rates then made known by the Commission were the rates prescribed by the Court in so far and as long as these rates were held effective or until superseded by superior authority.

Q. Now, when the Order No. 979 was issued in the State of Florida and Commissioners Wells and Matthews and Mrs. Eaton as the Railroad Commission of the State of Florida, by T. T. Turnbull, as Special Counsel joined by Fred H. Davis, Attorney General of Florida, filed its bill in the Circuit Court of Duval County to declare order No. 979 legal and to have it enforced. Is that correct?

A. I know there were proceedings in the Circuit Court but the exact nature of them I cannot say.

Q. Are they not there now?

Objection by Mr Ashby that the records are before the Court and speak for themselves. (P. 45A of testimony.)

[fol. 1783] Looking at this order I could not say whether or not they were on file in the Florida Commission's tariff, which are described in that order and which purport to follow the Interstate Commerce Commission's ruling for the reason previously stated that the rate expert keeps all of the tariffs filed.

By Mr. Ashby: The purpose of our Commission in changing rates in Florida was to recognize the superior authority of the Federal Court so long as that authority was in effect.

By Mr. Alston: By No. 990, the Commission did not mean to suspend its own rates because it cannot suspend its own rate without a notice and hearing.

By Mr. Ashby: It was the purpose of the order of the Commission to recognize the Federal authority which superseded the authority of the state.

(Objection by Mr. Alston that this is a conclusion of the witness.)

It is self evident from the order itself that the purpose was the recognition of the existing status.

(Same objection by Mr. Alston.)

"Court: You are not a member of the Commission?"

"A. No, sir."

Hearing adjourned.

[fol. 1784] Hearing before Hon. Horace M. Holden, Special Master at Atlanta, Georgia, March 27th, 1933.

APPEARANCES

For Plaintiff:

Messrs. Knight, Adair, Cooper & Osborne, Jacksonville, Florida; Mr. H. P. Adair and Mr. C. G. Ashby; Mr. T. T. Turnbull.

For Defendant:

Messrs. Alston, Alston, Foster & Moise; Mr. Robert C. Alston.

COLLOQUY

Mr. Adair: If the Court please, I would like to have the record show at the outset that we do not confess the errors of our way or the wisdom or propriety of the decision of the Master and of the Court in the determination that the Cummer Scale is not a just and lawful measure for restitution to be made us. We wish to save the point though we do now proceed and in proceeding insist that we are right and so proceeding does not cut off our rights in any Court of Appeal or otherwise to insist that the Cummer scale is the proper measure.

Mr. Alston: If your Honor pleases, the order of re-reference in this case contains the following sentences:

"Under the special circumstances of this case we adjudge that the claimants of restitution should have the same only upon condition that they submit to an investigation of the true rights of the carrier to collect for the transportation of their logs during the period covered by the restitution, and submit to such an adjudication as will justly and

finally settle the accounts between such claimants and the carrier."

[fol. 1785] It also contains the following sentence:

"To this end we recommit this matter to the Master, with direction that he ascertain whether the charge made by the carrier for transportation in each instance was a reasonable one so measured by common law standard, and if not, what was the reasonable charge to be made, and that he measure and award to each claimant restitution accordingly."

Then in the order of March 20th, 1933, the Court said:

"We have sustained our jurisdiction to make restitution for the period covered by our erroneous refusal to enjoin the attacked order, and this alone under the equitable conditions which we imposed is now before the Master."

We submit that the statement of our learned opponent does not comply with the requirements of either of these orders and that until compliance shall have been made by them they have no right to proceed in this rehearing; that the proceeding proposed by them does not conform to the requirements of the Court in either of the orders mentioned. The result is we object to the proceeding in this cause by the claimants.

Mr. Adair: If the Court please, I am sorry if in my poor blundering way I have been so inarticulate as to bring about this retort from my adversary. What I meant to say was that we are proceeding under the order of the Court, but we are saving the point. While this Court can cut off our right to proceed further along a particular line in this Court, what I wanted to make perfectly clear was that we are not waiving our right to proceed in the Supreme Court of the United States when we get through before your Honor and with Judge Sibley's court, in the event that the decision is not in accordance with what we consider the law to be. Do you understand our position, your Honor?

Court: I understand you.

[fol. 1786] Mr. Alston: The statement just made by counsel makes it perfectly clear, your Honor, that they are proceeding contrary to the order of the Court entered in this matter, or the order of re-reference by the Court in

this matter, filed on the third day of January, 1933, and I, therefore, renew my objection.

Court: Well, as I understand the position of the claimants, they are going to proceed with this matter, but they do not acquiesce in the correctness of the order or acquiesce in any order that might preclude them from excepting to the order that they have no right to proceed in this case unless they abandon all their contentions. That is the way I understand their position.

Mr. Alston: Your Honor, the position cannot be taken, I submit, for this Court has re-referred this case only in that "Under the special circumstances of this case we adjudge that the claimants of restitution should have the same only upon condition that they submit to an investigation of the true rights of the carrier to collect for the transportation of their logs during the period covered by the restitution, and submit to such an adjudication as will justly and finally settle the accounts between such claimants and the carrier." That is not being done. The right to this re-hearing is on the condition which is stated in this order, and that condition is not being fulfilled by the position which has been taken by the claimants.

Mr. Adair: We recognize that the law of the case is written in the opinion; that your Honor is bound by the opinion and we are bound by the opinion before your Honor; we are bound by the decision obtained before this Court, but as far as I know no court of equity has ever tried to cut off the right to have its blunders reviewed by a superior [fol. 1787] court, and I don't believe it was the purpose of this Court to attempt so to do. We are proceeding under that order. It is the law of the case. Your Honor is bound by the opinion in the order of re-reference and we are bound by it. It has been adjudged that in so far as the Cummer scale is concerned it is not the general measure of restitution, and in this particular case, or some of these cases we will show the Cummer scale is unreasonably high, or I believe so, but whether we will be able to prove it or not is another point. Shall we proceed, your Honor?

Court: I think I should proceed with this order without undertaking to decide the effect of it. The effect of it is a matter for future consideration by the Courts having higher authority than I. Of course your objections, Mr. Alston, as to their proceeding might preclude them, and

of course you preserve by your statement here your contention that they have no right to proceed with this case without waiving error.

Mr. Adair: We don't waive any error. We are proceeding under the order and according to the order, as we must, and we want to be perfectly and thoroughly understood that we don't waive any errors that the Court may hitherto have made in this or any other hearing. In other words, we will conform to the order of the Court with right of appeal.

[fol. 1788] J. W. PERRIN, recalled to stand by claimants, testified as follows:

By Mr. Adair:

"Q. You are the same Mr. Perrin who has heretofore been sworn and testified in this cause?"

A. Yes."

"Q. Mr. Perrin, do you recall the existence of a trackage agreement between your good railroad and the Burton-Swartz Company?"

"A. Yes, sir."

"Q. I wonder if you will be good enough to bring that agreement with you to the next hearing?"

(Objection by Mr. Alston, as being irrelevant.)

"Q. Mr. Perrin, do you recall whether or not you have any other trackage contracts over tracks of the Atlantic Coast Line Company for the transportation of logs or other things over them?"

"A. I think that is the only one."

"Q. We will be very much obliged if you will examine your records and bring to the next hearing all of the trackage contracts that the Atlantic Coast Line Railroad Com- reasonable one as measured by common law standard, and pany has had for the use of its tracks for the transportation of logs under trackage agreement during the last fifteen years. Now, Mr. Perrin, can you inform me whether or not there is an established custom between and among [fol. 1789] the railroads as to any rental for the use of log cars, any per diem rate and is there any difference between the loaded and empty cars?"

Objection by Mr. Alston as being irrelevant and immaterial.

I can answer the question from general knowledge. The per diem charge made by one road against another takes no notice of whether the cars are loaded or empty. The per diem charge is one dollar per day. I don't know whether that means the tallest or most expensive box car as well as the smallest and humblest log car. As between railroads and shippers, that would be demurrage but between railroads it would be per diem. I don't know whether or not there has been established and generally recognized a per diem charge for rental of locomotives such as used in this log traffic. I have never heard of one being made. The operating department would know. Mr. Lowell White is still with us. He is in Wilmington in charge of mails and until recently was in charge of the express line.

Mr. White was superintendent of transportation in, however, not the sense that is usually spoken of as superintendent of transportation, in as much as he was more engaged in the inspection of the actual work of the transportation and had nothing to do with the making of the rules or regulations under which transportation was performed.

"Q. Who would know about this, based on this rental of locomotives and on fair rental of cars, or I might say, the distinguishing or rather, establishing, of an interchange rate of one dollar per day, which one of your officers?"

"A. If anyone had that authority to make a lease of a locomotive it would probably be our General Manager."

I never heard of a standard charge for locomotive rentals. In other words, if the Atlantic Coast Line Railroad Company should lease a locomotive it might be at a charge of perhaps double as much as some other railroad [fol. 1790] would charge, or vice-versa. There is no uniform rate that I know of for such locomotive charge. The reason I mentioned the general manager is that if the Atlantic Coast Line Railroad Company should be called upon to rent or lease a locomotive he would be the man to fix the charges. He would have the final say so. It might come to him through the Trainmaster or Assistant Superintendent or Assistant General Manager, all of whom are in the territory and taking Florida for instance, it would

be made in Florida but it would go to him in Wilmington to have the final say so on it.

(Witness excused.)

GEORGE W. LAMB, called to the stand by claimants, testified as follows:

By Mr. Adair;

I have been sworn before in this matter and I am the same Mr. Lamb who has testified heretofore in this matter (P. 10B of tes.) This paper marked Lamb's exhibit 23 is my statement of log trains operating between Hines and Palatka on the Atlantic Coast Line Railroad Company for the month of November 1930. That shows twelve empty trips. There were thirteen loaded trips and twelve empty trips. On the return movement there were three cars of feed, Palatka to Hines, one of lumber and two of hampers, Gainesville to Palatka and one coal car and one carload of hogs from Burnette's Lake to Palatka, as indicated by the exhibit. That is eight in all. There is no way that I can ascertain the amount of revenue derived from those eight cars. It was not computed in the calculations that I made. It possibly could be ascertained by getting the particular waybills that we handled and running down those particular cars and the waybills to locate the revenue. It would be quite a job to locate it. There could be thousands or hundreds of thousands of waybills for that particular date. I testified in this case that Item 394, Fuel for Train Locomotives, included a charge to the Florida State Line of five mills per ton mile and that we could very reasonably have charged seven mills per ton per mile not only to the State line but beyond the State [fol. 1791] line to the points where the coal was used in Florida, that is, to Palatka and Wilcox, thereby understating to that extent the cost.

I stated in my original testimony that I felt these figures were understated to the extent of the difference between five and seven mills and I mean from the State line to the point of use. In other words we do not assign to the State of Florida, the expense of hauling from the Alabama fields and Virginia fields to Florida. Now, if you are developing

a cost within a particular state, that is, a part of the cost of that fuel, we only charge them the average cost to the system or the amount we paid for the fuel plus the off line. While originating on a foreign line that freight was included in the cost, but the service performed by the balance of the system clear down to Florida was not included in this cost and I think it a perfectly proper charge, in an effo to explain the cost. It was included to the Florida line to the extent of five mills as included in these figures.

Q. The record shows here there was a trainload movement of logs from Homassasa to Lacoochee and I wonder if you will be good enough to secure a like cost for that trainload movement for April, 1929, showing the same items in that instance as you procured and showed in this instance.

Objection by Mr. Alston that the plaintiff has no right to require such a tremendous amount of work on the part of the witness.

A. It would take a considerable time. I cannot answer definitely but I would like to illustrate some of the difficulties. First, there is a bare possibility that the record for April, 1929, may no longer be in existence. We retain rec- [fol. 1792] ords for a certain period of time and under the Interstate Commerce Commission rules for preserving records, certain records may be destroyed periodically. I am merely mentioning this as a possibility and not saying that they have been actually destroyed, as I cannot answer that definitely. It would necessitate going to the vouchers and going through every voucher for the month of April, 1929, and getting out the record of these particular accounts. Then going and getting the tickets as we had to do in this particular case. We had to go and get the tickets issued for fuel for every locomotive and for every day that we operated. I recall when I asked for that information for the Hines to Palatka movement there was quite an objection made on the part of the man who had to make it up and it did require a considerable length of time and I am frank to shy it occasioned considerable expense and time to prepare it. I cannot give you the definite period but I do know it required quite a long time of a number of men from various offices, and not any one office because it is gathered from various offices, as you have to pick out the particular voucher, or ticket or payroll, or time ticket,

which ever it may be, apply to the expense listed there to develop it for any particular run.

"Q. Tell me what papers, books and records you have to get for this so we will know about how to put a subpoena on you, if needed."

You would have to get the timekeeper, I cannot tell you his name, the timekeeper on the third division, that is in Florida, who particularly handled that. You would have to get the time tickets.

Objection by Mr. Alston that the question is irrelevant. (P. 15B of testimony.)

Argument concerning right of the claimant to require the witness to furnish this information. (P. 16B to 21B.)

[fol. 1793] The data contained in the first two lines of my Exhibit No. 23, and the lines reading, "Logs Northbound, 13 trips, empty Southbound 12 trips," was obtained from the car accountant, from various books. It necessitates getting the conductor's wheelage reports and then going to the records. (P. 25B of tes.) Those figures which are in the upper blocked off statement and portion of the statement above the words, "Out of Pocket Expenses" could be obtained from the car accountant and from the wheelage reports or waybills. Some would be in one and some in the other. Account 392, Train enginemen would have to be developed from the time slips. Account 393, Fuel for train locomotives, would have to be obtained from the fuel issues. Superintendent Langley at Jacksonville would be in charge of the records. Account 397, would also be obtained through Superintendent Langley and the Superintendent of Motive Power, and I think that answer would likewise apply to 398, 399, 400, 401, Trainmen would follow the same procedure as 392. The Account representing the time slips and payrolls would have to be developed from both Superintendent Langley's office and Superintendent of Motive Power. Account 402 would be handled through the Superintendent of Motive Power the same as Account 394 to 400, at Wilmington, as well as Superintendent Langley. In other words, it is a rather complicated piece of work. You have to go through the month's records and identify each of these individual trains operating in this particular serv-

ice and then you have to go through all the vouchers or time [fol. 1794] slips or payrolls or whatever may be necessary to handle for each day for each of these various items and then it would have to be handled through the car accountant. You would have to go through his records to develop each train and the number of cars in each train and work out the car miles and tonnage and ton miles from them. There are various compilations to be made in that connection.

Item 392 would be made from the time tickets with respect to wages. They may be in the time books transferred from the time ticket to the time book containing the wages of that particular engine for that run. It would simplify it to look at the time book rather than the time table, if one man is confined to that particular train. He may be running on the log train one day and another train the next. The fuel is obtained from the fuel issues that are issued at the points where these locomotives are supplied with coal. I can't answer definitely where water would be in that Homassasa movement but Superintendent Langley I think would be the proper source. Lubricants are directly allocated to one train. I think the Superintendent of Motive Power at Wilmington has the record furnishing the water. The same would apply to lubricants and other supplies for train locomotives. I do not know in what book. There are supplies charged out for each one of these trains. Probably tickets are issued for the supplies and you will note those amounts there are small, one of $8.82 and another of $8.01. Engine house expenses for train, the Superintendent of [fol. 1795] Motive Power keeps that. I don't know what record it is in. Trainmen is had from either the time book or time ticket of each employee handling the log trains. The train supplies and expenses, the Superintendent of Motive Power in Wilmington has that record. I don't recall how he designates that record. I will find out and let you know. As to 399 and 402, I don't know what books those records were in. They possibly got them from vouchers of the Auditor of Disbursements.

By Mr. Alston:

I mentioned Mr. Dewey, Mr. E. M. Dewey. He is the same Dewey sworn in this case before and examined on this

subject. I spoke of Mr. Langley. I mean Mr. F. B. Langley, sworn in this cause on this exhibit. (P. 30B of tes.)

The chief clerk in the Superintendent of Motive Power's office is Mr. C. J. Oldenbutle. He is the man who actually compiled the figures and testified in respect thereto at the Wilmington hearing. I mentioned someone in Jacksonville connected with Mr. Langley, who was time keeper. That was Mr. A. D. Aspinwell. He testified. There is also a Mr. P. S. Smith, who testified in the Wilmington hearing from Tampa, Florida. He is chief clerk of the Superintendent of Motive Power of the third division. That is the division that covered all the lines, except 126 miles of Atlantic Coast Line, in Florida. I think I mentioned the possibility of the necessity of getting Mr. Price, the Auditor of Freight Accounts. As I recall it, Mr. Price was present at the Wilmington hearing but was not called to testify but was ready to testify if necessary. All of the persons I have named have been called and explained about this ex-[fol. 1796] hibit No. 23, except Mr. Price and there was one other man called in that case in connection with Exhibit 23, Mr. J. L. Colson. He was a traveling auditor at the time he was called. As far as I can now recall, that covers all of them that testified.

By Mr. Adair:

Mr. E. L. Potter is our Auditor of Disbursements. He was up there, I think we offered him and I think we mentioned Mr. Potter and Mr. Price and several others were in the room at the hearing in Wilmington but I don't think you called for them. We offered all the records and the men there to support them who actually dealt with this case in any respect whatever.

By Mr. Alston:

At the hearing at Wilmington before the Master, all the records that I have mentioned were present. I recall distinctly the timekeepers from Jacksonville and Tampa brought their time books and time slips and all their books at that hearing. Everything was before the Master in that hearing in Wilmington. We brought in all the records, vouchers, payrolls, time tickets, time books and everything else.

By Mr. Adair:

We didn't have the waybills there but told you where you could get them across the street in another building.

By Mr. Alston:

That they were available if you wanted them. We had stacks of waybills that would fill this room and we couldn't get them into the hearing room but you were offered them if you wanted them. They are bound in large books and we had some in the hearing room just merely to show the size of them and I think the record will contain the approximate dimension of them.

By Mr. Adair:

In railroad circles the universal custom is to lease railroad cars at one dollar per diem, that is interchange of cars between companies and is the average. Some cars might be a less sum but that is the rule. That is the rule that [fol. 1797] applies regardless of what kind it is with the exception of refrigerator cars. I think refrigerator cars are on the two cent milage basis. As far as I know, that interchange as far as any costs were compared would apply to these cars used in the Brooks-Scanlon movement in the trainload movement from Homassasa to Lacoochee and also, the Wilson Cypress Company movement from Hines to Palatka, but I wouldn't want to make that a definite statement. That is out of my department and there may be some exception to it and I would want to qualify to the extent that there may be some exception. Mr. E. M. Dewey, car accountant, could tell you about that. As far as I am advised, our company in the past has not made a practice of renting, either as lessor or lessee, locomotives. As Mr. Perrin testified it would ultimately go to the General Manager for final approval. I could not give you any evidence on that. I know nothing about a custom in railroad circles to rent or lease a car from third parties, as distinguished from this one dollar a day interchange between the railroads. I didn't say that our car accountant would be the man to know that in our company. He is the man that is informed generally as to the cars and I assume he would be the man to answer it. To my personal knowledge there

are not a large number of railroad cars which are owned by third parties and rented to the railroads. I don't recall any at the time on the Atlantic Coast Line. In railroad circles generally, there may be or may not be. The waybills covering this log movement are in charge of the Auditor of Freight Accounts, Mr. Price, at Wilmington.

(Witness excused.)

[fol. 1798] Mr. T. M. TRUE, sworn by the plaintiff, testified as follows:

Direct examination.

By Mr. Adair:

My name is T. M. True, Secretary of the Southern Cypress Manufacturers' Association, with headquarters in Jacksonville. (P. 35B of tes.)

Mr. LAMB recalled to the stand by Mr. Alston.

The coal is charged to the third division in our regular accounts on the basis of the average charge out price of the system. In ascertaining the cost sustained where we want to develop the particular cost of handling these trains in Florida, we will charge to that coal five mills per ton mile for the haul over the balance of the system for the miles to the Florida state line. We did not charge, however, anything for the haul from the State line to the points where the coal was loaded on the engine in the Hines to Palatka movement. It seems in ascertaining a cost that it is entirely proper to include something for service for hauling that coal because Florida or the third division, does not perform a like service for the balance of the system. In other words, to make it a little clearer, if we attempted to allocate to the State of Florida absolute operating expenses we would charge it to Florida from the point, from the mine to the Florida State line. In that particular case something like five or seven mills per ton mile on coal and on other materials used, their rails for example, that are brought into Florida from the North. Substantially all

of the material used in Florida is handled over the balance of the system into Florida without any change in our general method of using the system's operating ratio in charging things to Florida. That is the reason we have always [fol. 1799] claimed that the expenses actually charged to Florida understate the amounts applicable or chargeable to Florida. The Commission so stated in their statement that undisputably the cost in Florida was greater than the cost to the system as a whole, and therefore, in the findings of the Commission they stated we understated the cost of handling this log traffic.

By Mr. Adair:

"Q. Mr. Lamb, Florida performs certain terminal services for your through trains in Florida?

A. Through trains?

Q. Yes, interstate trains. Don't you always claim there are certain extra expenses, terminal expenses in Florida that increase the cost in the service?

A. I claim we have always maintained that Florida, by reason of its peninsular shape, has no overhead traffic. In other words, every ton of freight, either originating or terminating in Florida has a terminal, and I might add a [illegible] originating in Florida, passing through Georgia, South Carolina, North Carolina and Virginia on to Eastern destination would have no terminal but would be an overhead traffic."

Terminal expenses are, of course, charged where ever the traffic originates or terminates. If it originates in Florida the terminal expenses incident to the originating of that traffic is charged to Florida and that is one of the reasons we claim that the cost in Florida is greater than on the balance of the system. It is not proper to give Florida credit for the performance of service to these interstate trains. They occur in the State of Florida.

[fol. 1800] I think it is entirely proper to charge them for the coal over the balance of the system. That is, the originating service or terminal service is properly chargeable to Florida and in no system of cost accounting methods that you can produce by any authority can change that but that charge is made in the State of Florida for originating or terminating service.

Mr. Adair: If the Court pleases, before proceeding with my examination of Mr. True I would like to make a brief statement for the record. My duty here lies with the Wilson Cypress Company primarily, and the Brooks-Scanlon Company likewise has a small interest here. All of these companies are dealing with train load movements in every instance.

Court: In every instance?

Mr. Adair: Yes, sir; with these three companies, the Wilson Cypress Company, the Cummer Cypress Company and the Brooks-Scanlon Corporation. Now, I don't think there is a single exception with respect to the haul of even a single car, moved there in this regular shuttle train movement. I cannot make that statement without reviewing the record, but I will review it and make the statement categorically, but certainly practically in every instance each of these companies are interested only in the train load movement.

Court: And these other companies, as a matter of information?

Mr. Adair: I am coming to them. The companies represented by the State, of which I think there are approxi-
[fol. 1801] mately around 25 or 27, and the Wilson Lumber Company as distinguished from the Wilson Cypress Company, all deal with single car load movements. So there may be, or it may not be said that the interests of these various claimants in this cause, which is operating really as a consolidated cause, though I don't believe it is actually being consolidated, their interest is not identical, and I might say from the very beginning that I have declined to take part in any car load shipment, because I felt I should keep it my duty to the train load shuttle train movement not to do so. Now, in the course of this examination, this proceeding here, in the interest of economy of time, it is going to be much better as I see it for the evidence to all be offered as it comes along. There are going to be a lot of rate comparisons to be made at this and future hearings, and I wish to make my position clear, that my own view is notwithstanding in the interest of all these comparisons may be offered, these rates applying to single car load shipments, that my contention now is and will continue to be henceforth, that a substantially lower transportation charge is warranted in the train load movement than in the car load movement. I think I should make that statement so I won't

be misunderstood when all of these rate comparisons dealing with specific movements of trains in other vicinities are compared with car load rates. The train load movement is an engine at one end and a caboose at the other end.

Court: There is *is* no stop at intermediate points for delivery of single cars?

Mr. Adair: No, sir. I will read you the Wilson Cypress Company's paper, and I direct your Honor's attention to what was Exhibit #31, on page 329, of the original proceedings before the Interstate Commerce Commission, out of which this suit arose, that is, this restitution proceeding [fol. 1802] arose. That is a service contract made between the Atlantic Coast Line Railroad Company, and the Wilson Cypress Company under date of March 22nd, 1926, and it shows there was a successor contract, succeeding and cancelling one made in 1924, between the same parties with respect to this train load movement. A new contract between the same parties, a new contract because it was shipped from a new place. As I take it your Honor will consider in this restitution proceeding any part of the evidence taken before the Interstate Commerce Commission to which your Honor's attention is called without it being formally re-offered. That is what you did before, and I now call your attention to this exhibit.

Court: Was there any agreement as to that?

Mr. Adair: There was before.

Court: Before this hearing is over I would like to have your ideas as to the evidence before the Interstate Commerce Commission, because there seems to have been some difference about it before. I treated before the entire record before the Interstate Commerce Commission was part of the history of the case like the pleadings, and I don't think I treated it as if it was evidence introduced before me. If you are going to make any agreement at all about that I want to know that agreement. It is not here suggested by me that you make any agreement at all, but if you are going to make it I would like for it to be expressed plainly.

Mr. Adair: I will discuss that with Mr. Alston, your Honor, and report back to you. In the meantime this ex-
[fol. 1803] hibit No. 31 in order to be on the safe side I now re-offer it, and also exhibit #28 on page 313, dated March 20th, 1926, between the Atlantic Coast Line Railroad Company and the Cummer Cypress Company.

Mr. Alston: We object to them as being irrelevant and immaterial to the matters involved in this hearing.

Court: It is not that you are objecting to the exhibits in lieu of the originals?

Mr. Alston: No, sir.

Court: It is admitted then they shall be treated the same as if originals?

Mr. Alston: Yes, sir.

Mr. Adair: I propose to state as briefly as I can the general contents of these contracts, to which to all intents and purposes are identified. The Wilson Cypress Company's contract in question was made on March 26th, 1926, superseding one made in November, Nov. 20th, 1924.

Court: How long did that contract actually last before it was terminated?

Mr. Adair: The preceding contract? The original contract was the one of November 20th, 1924, between the parties hereto covering special log train service from Old Town to Palatka, and then it became more convenient to ship from Hines to Palatka.

Court: Does the contract itself provide the charge?

Mr. Adair: Yes, sir; the published rate, which was then the Cummer scale.

Mr. Alston: Your Honor, there are certain things I want to reply to. He states that evidence of discrimination against interstate issues are not to be considered in the [fol. 1804] determination of the reasonableness of the rate. That is not the law as we understand it and we will undertake to show your Honor.

Mr. Adair: I may have said that, but what I meant was discrimination of persons and localities were not involved.

Mr. Alston: Do I understand that you admit that discrimination against general interstate commerce too becomes an element?

Mr. Adair: No, sir.

Court: Is it your contention there is any discrimination vitiating this contract?

Mr. Alston: No, sir; not at all. What I am stating to your Honor is that we do not accept the statement of Mr. Adair that discrimination against interstate commerce is not to be taken into consideration in determining a reason-

able rate. I don't know what his position is, unless it is he contends that discrimination against persons and places are not to be taken into consideration and he has preserved for future time his statement as to discrimination against interstate commerce.

Mr. Adair: I think I better make that after you have finished, and I will then make my statement.

Mr. Alston: Not only that must be taken into consideration, but discrimination against persons and places are to be taken into consideration.

Hearing reconvened at 2:00 P. M.

[fol. 1805] Mr. Adair: Mr. Alston asked just before adjournment as to our position on discrimination as to interstate commerce. As we see it discrimination as to places and persons has nothing to do with this case, or discrimination against interstate commerce, at this stage of the proceeding. The thing we are engaged in is solely to determine the measure of our restitution. Discrimination against persons and localities and discrimination against interstate commerce has no place in here at all.

Court: I feel that I can understand it better by studying the testimony as it comes before me. I think I understand the issues.

Mr. True recalled to stand.

Direct examination continued.

By Mr. Adair:

I have had over thirty years experience in traffic work. I was employed by the Illinois Central Railroad in the Traffic Department in Louisville, Kentucky in 1902 and later transferred to Memphis when the territory of the Illinois Central's southern lines were transferred from Louisville to Memphis, and later I was in charge of the traffic compilation department of the New Orleans & Northeastern Railroad in New Orleans and for a period of about fourteen years was engaged in rate adjustments and tariff compilations for lumber and forest products. For the past sixteen years I have served with industrial lumber com-

panies or groups through the Southern Cypress Association, dealing almost entirely with tariff and transportation matters. I am Secretary of the Southern Cypress Manufacturers' Association and most of my work is with traffic. I have had experience in the Mississippi Valley and I know something about transportation conditions in the Mississippi Valley. I have lived in Memphis and New Orleans and Arkansas and I am more or less familiar with that part of the country.

[fol. 1806] I am familiar with the topography and transportation conditions in Florida and I am familiar with the topography and transportation conditions in Florida as to the Atlantic Coast Line Railroad. I made a trip the early part of November by automobile to the Mississippi Valley, that is to say, to Montgomery, Alabama, Memphis, Tennessee, and Chattanooga, Tenn., in connection with the hearing before the Interstate Commerce Commission in this particular case. The purpose of that trip was to determine to what extent the transportation conditions were similar to the conditions existing in Florida with respect to the Atlantic Coast Line Railroad. I found that this territory which I visited where the (P. 45B of tes.) rates on logs were recently established per car regardless of the weight, that the topography of the country was similar to that in Florida and that transportation conditions were as favorable within the State of Florida as they were elsewhere and perhaps more favorable. For instance, the country around Chattanooga is mountainous and the movement of logs into mills at Chattanooga originates on the branch lines whereas much of the movement in Florida is on the main line of the Atlantic Coast Line Railroad.

Objection by Mr. Alston to this inquiry into the rates recently made for the reason that those rates were made substantially after the time now under inquiry and on the further ground that those rates have been found by the Interstate Commerce Commission to have been made for the purpose of meeting truck competition.

Mr. True, continuing:

The topography of the country in the vicinity of Memphis is very similar to that of Florida. It is low and swampy [fol. 1807] and at Montgomery the country is level with some rolling country.

I think the conditions throughout the Mississippi Valley are quite similar to the conditions existing in Florida. If there are any favorable conditions in the topography of the country, I would say it would lay in favor of Florida. In railroad parlance, as distinguished from a geographical matter, that portion of the South lying East of the Mississippi River and South of the Ohio River and not including Georgia and Florida, is the Mississippi Valley. I would say that the Western portion of Alabama lies in the Mississippi Valley. The Eastern portion is in the so-called Southeast.

I am familiar with the topography and transporation conditions in the trans-Mississippi Country, including Arkansas, Louisiana and Texas. That portion of Arkansas lying directly West of the Mississippi River is very low and swampy, except in the Northern part of the State.

Objection by Mr. Alston.

I am not entirely familiar with the topography of Texas as far as personal knowledge goes. I have been there but never lived there. The levels of rates on commodities generally in the Southwest territory across the Mississippi are higher. I would say that the volume of log movements over common carriers is much more dense in Florida than elsewhere. A certificate under the signature of the Chairman of the Florida Railroad Commission, E. S. Matthews, [fol. 1808] Chairman, relating to rates on logs from Aucilla, Florida to Tallahassee, Florida, and from Madison, Florida to Tallahassee, Florida, was introduced as Claimant's Exhibit No. 1-A.

"Q. Now, Mr. True, I wish you would tell me something about this one thousand feet scale as compared with the per car or as compared with a per one hundred pound rate; what is this per one thousand feet rate anyhow?

"A. Why, the rate is in dollars or cents per one thousand feet and you must determine the number of thousand feet per car, and then to convert it into cents per one hundred pounds you would have to determine the weight per thousand feet."

In one instance, the revenue is determined by measurement under the Doyle Scale and the other by weight or by per car. You understand the estimated weight per one thousand feet on logs are not observed by carriers where

the cars can be track scaled but in the absence of actual weight they do have estimated weights. I have here a copy of a letter from the Southern Weighing and Inspection Bureau, in which is determined the estimated weights on different kinds of logs for account of the Wilson Lumber Company of Perry, Florida.

Those weights are as follows:

White oak, 14 pounds per foot.
Ash, 10 pounds per foot.
Magnolia, 13 pounds per foot.
Maple, 10 pounds per foot.
Bay, 13 pounds per foot.
Gum, 12 pounds per foot.
Elm, 11 pounds per foot.
[fol. 1809] Tupello, 12 pounds per foot.
Pine, 11 pounds per foot.
Basswood, 12 pounds per foot.
Poplar, 11 pounds per foot.
Cherry, 12 pounds per foot.
Hackberry, 10 pounds per foot.
Hickory, 14 pounds per foot.

They have not included cypress on this estimated scale. It may be that the Wilson Lumber Company at Perry does not manufacture cypress lumber, but my experience is that cypress logs will weigh ten to twelve pounds per foot, depending upon the state of dryness. In a log scale applying per thousand feet in logs generally, I would say the average weight was about twelve pounds per foot.

"Q. Now, I wish you would take this Aucilla scale to which I have referred, from Aucilla to Tallahassee 34 miles and from Madison to Tallahassee, 55 miles, and make a comparison of them on a basis of the Cummer Scale for ten, twelve and fourteen pounds per thousand feet for the distance mentioned.

A. For a distance of 34 miles, the Cummer Scale rate per thousand feet at ten pounds per foot, would be $1.71 per thousand feet."

The Aucilla rate was $2.50 for ten pounds. At twelve pounds per foot the rate would be $2.05 per thousand against $2.50; at fourteen the rate would be $2.39 per thousand feet against $2.50. Yes, if a man was going to ship

oak logs or hickory logs he would have very close to the Cummer Scale on the Seaboard Air Line Railroad. They make beer kegs out of white oak. The rate from Madison [fol. 1810] to Tallahassee for the distance of 55 miles under the Cummer Scale at ten pounds per foot would be $2.10 per thousand feet; at 12 pounds per foot it would be $2.42 per thousand feet and at fourteen pounds per foot the rate would be $2.94 per thousand. The Interstate Commerce Commission Scale for 34 miles at 10 pounds per foot would be $4.00 as against the Seaboard Air Line rate of $2.50 for ten pounds. At 12 pounds it would be $4.80 per thousand as against $2.50, and at 14 pounds it would be $5.60 per thousand as against $2.50 per thousand.

A certificate from the Chairman of the Florida Railroad Commission, dated the 24th of March, 1933, and purporting to be a correct copy of rates and charges for the transportation of freight therein described on the line of the Atlantic Coast Line Railroad Company and Seaboard Air Line Railway Company was introduced as Claimant's Exhibit No. 2-A.

Tariff rates under the certificate of the Chairman of the Florida Railroad Commission of March 1st, 1933, introduced as Claimant's Exhibit 3A.

Objection by Mr. Alston. (P. 60-B of tes.)

[fol. 1811] Tariff rates under the certificate of the Secretary of the Interstate Commerce Commission introduced as Claimant's Exhibit No. 4A.

Objection by Mr. Alston.

Tariff rates under the certificate of the Chairman of the Interstate Commerce Commission dated March 24, 1933 offered as Claimant's Exhibit No. 5-A.

Objection by Mr. Alston.
Argument. (Pages 64B to 73B of testimony.)

Certified copy of tariffs of the Alabama Public Service Commission offered in evidence as Claimant's Exhibit No. 6A.

Certified copy of tariffs of the Mississippi Railroad Commission offered as Claimant's Exhibit 7A.

(Mr. True, continuing:) Claimant's exhibit No. 3A of the tariffs issued by the Florida East Coast shows point to point rates to Wabasco, Florida, from points between Sabastian and Wiley, Florida, including a distance ranging from four to forty-seven miles. The forty-seven mile rate is fifteen dollars. Those are substantially on a level [fol. 1812] with the so-called short log rate, which is about half way in between the Cummer Scale and the I. C. C. Scale. The next tariff, from five to ninety miles, that is I. C. C. No. 788 is the distance scale applicable to Jacksonville, Florida from the Florida East Coast Railway Stations. That is on an approximate level with the Florida short log scale, I. C. C. 625 applies to Osceola, Florida from Florida East Coast Railway stations for distances of twenty miles and over five miles at a rate of nine dollars and a half per car for forty thousand pounds, which is the same short log rate. All of those apply to long logs. The tariff was effective April 18, 1927. That is in effect today. I. C. C. 719 of the Florida East Coast Railway applied on logs to Melbourne, Florida for distances from five to twenty miles. That is the mileage scale to that particular destination and it is the same as the short log scale.

The next is the Apalachicola Northern Railroad tariff, G. F. O. No. A95. That applies to Apalachicola, Florida from specific stations on the Apalachicola Northern Railroad shown as a maximum distance of 54 miles, at a rate of $3.05 per thousand feet. The Apalachicola Northern Railroad is operated in Florida. For a distance of 54 miles the rate at ten pounds per foot would be $2.10 per thousand feet. At 12 pounds per foot, the rate would be $2.52 per thousand feet and 14 pounds per foot would be $2.94 per thousand feet. Based on the I. C. C. Scale for the same distance of 54 miles the rate would be $5.40 a thousand feet based on 12 pounds per foot as against $3.20 per thousand feet on 12 pounds a foot. At 14 pounds per foot the rate under the I. C. C. Scale [fol. 1813] would be $6.30 per thousand feet or double the rate to Apalachicola of $3.20 a thousand feet. For 12 pounds that rate compares with the Cummer Scale at $2.52 against $3.20. It is substantially closer to the Cummer Scale than to the I. C. C. Scale.

Q. Now, the Apalachicola Northern Railroad Tariff G. F. O. A-46, published rates on resineous waste wood. About how does that compare with the short log scale. Is it lower or higher or can you tell that?

A. Well, that is somewhat lower than the short log scale distance 160 miles and under. The short log rate for 160 miles is $23.00 per car, forty thousand pounds, while this resineous waste wood rate for 165 miles, is five and a half cents per hundred pounds for forty thousand pounds, which would be $22.00. It is between the Cummer Scale and the short log rate. The South Georgia Railway rate is four and a half cents per 100 pounds for 82 miles and that would be $18.00 per car as compared with a rate of $17.00 per car for the short logs in Florida. This tariff of the Atlanta & St. Andrews Bay Railway Company, supplement O, to G. F. O. 108, applies on resineous wood, carload weighing forty thousand pounds for distances up to and including sixty miles of a flat rate of three and a half cents for any distance. That would be lower than the short log rate for the longer distances but higher than the short log rate for the shorter distances. The tariff of the Alabama and Western Florida Railroad on pulp wood to Chipley, Florida, of seven dollars per car applies from stations in Washington County to South Port, Florida, the maximum distance being 38 miles. Pulp wood would weigh 3,500 pounds per cord on green wood. That rate is $7.00 [fol. 1814] per car regardless of weight. That is a lower rate than a forty thousand pound car of short logs, substantially lower. The rate for thirty-eight miles under the Cummer scale would be $1.71 per one thousand pounds. A fifty thousand pound car would be $8.55 against $7.00 for this long haul on the pulp wood.

Hearing adjourned.

Hearing reconvened at ten o'clock A. M. April 7th, 1933. Before Hon. Horace M. Holden, Special Master, Atlanta, Georgia. Present as before.

Certified copy of seven tariffs of the Interstate Commerce Commission introduced as Claimant's exhibit No. 8-A. Ten certified copies of tariffs of the Railroad & Public Utilities Commission of the State of Tennessee introduced as Claimant's Exhibit 9A1 to 9A10, inclusive.

Objection by Mr. Alston (pages 83B to 91B of testimony).

Eleven documents, being certified copies of tariffs of the Railroad Commission of Texas were introduced as Claimant's Exhibits No. 10-A.

Certified copy of tariffs of the Railroad Commission of Texas were introduced as Claimant's Exhibit No. 11-A.

Certified copy of tariffs of the Georgia Public Service Commission introduced as Claimant's exhibits 12A1 and 12A2.

Excerpts from Exhibit No. 52 of E. M. Price in the hearing before the Interstate Commerce Commission were introduced as Claimant's Exhibit 13A.

Objection by Mr. Alston. Argument. (Pages 97 to 103 of testimony.)

[fol. 1815] Perrin exhibit 23 I. C. C. document No. 18364 offered as Claimant's Exhibit No. 14A.

Objection by Mr. Alston to the following of Claimant's exhibits: 9A1, 9A2, 9A3, 9A4, 9A5, 9A6, 9A7, 9A8, 9A9, 9A10, 10A, 12A1, 12A2, 11A.

T. M. TRUE recalled to stand and direct examination continued.

By Mr. Adair:

I am the same Mr. True who testified at the last hearing here on Claimant's Exhibit 7A. Item 265 of the Mississippi Central Railroad Tariff 780E furnished rates on hardwood logs, carloads, in cents per car, regardless of weight to Bude, Mississippi, on shipments of five cars or more, moving in one day in the same train it being optional only with the railroad company as to handling in the same train. I have made a comparison with that scale of rates as were shown on this paper of that exhibit 7A, with the Cummer scale and with the so-called Interstate Commerce Commission scale. This rate shows the distances in miles from the stations named in Item 265 of the tariff shown on the statement Mississippi Central Railroad Tariff 780E, in part of Claimant's Exhibit 7A, page 3. I stated the rates

of the Mississippi Central Railroad applied in dollars per car regardless of weight and I have compared those rates with the rates of equal distances based on weights of sixty thousand pounds, seventy thousand pounds and eighty thousand pounds under the Cummer scale and I. C. C. scale. The Mississippi Central rate would be the same [fol. 1816] whether there were sixty thousand, seventy thousand or eighty thousand pounds, it would be the same regardless of the weight of the car. The per car charges would fluctuate with the actual weight. At seventy thousand pounds from Bassfield, Mississippi, the Mississippi Central rate would be fifteen dollars per car while the Cummer scale would be $16.10 per car, but if we take the rate from Clyde, Mississippi, or a distance of 101 miles the rate of the Mississippi Central would be $20.00 per car and the Cummer scale $19.60, which would be higher than the Cummer scale for that distance, forty cents a car higher. For that distance the Interstate Commerce Commission scale for seventy thousand pounds would be $45.50 as compared with the Mississippi Central rate of twenty dollars per car, or over double. At sixty thousand the Cummer scale rate would be somewhat less in all cases than the Mississippi Central rate. I would say about ten per cent less. The rate actually charged as shown under I. C. C. scale would be approximately double the Mississippi rate. At seventy thousand pounds in some cases it would be higher and in some less than the Cummer scale, but approximately the same. At eighty thousand pounds the Mississippi Central scale is lower in all instances than the Cummer scale. I have a comparison of the rate named on page 3 of the same exhibit shown as Item 267. That rate [fol. 1817] is fifteen dollars per car regardless of weight from Wanilla, Mississippi to Hattiesburg and to intermediate points and the measured distance from Wanilla, Mississippi is 63 miles and it is the only specific point of origin shown. That rate of fifteen dollars per car for the Mississippi Central is slightly higher than the Cummer scale for a car of sixty thousand pounds but it is less than the rate under the Cummer scale at a weight of seventy thousand pounds. At eighty thousand pounds it is substantially less. The comparisons from Wanilla would be approximately the same as those from Bude, Mississippi. Those rates were effective August 20, 1928 and are in effect today

(P. 110B of tes.) and they have been in effect continuously since then. The rates to Bude, Mississippi are all of quantities of five or more cars per train shipped in the same train but the rates to Hattiesburg are not so restricted.

The trainload movement tabulation from which the witness testified introduced as Claimant's Exhibit 15A.

Objection by Mr. Alston.

The rates applicable in Texas on logs as shown in Exhibit 10A were in effect October 15, 1927 and have been continuously in effect up to the present time and are in effect today. The rates in Texas are based on two principal log scales. Item 2040H corrected is applicable only on intrastate (local Texas) traffic on hardwood logs carloads in dollars and cents per car for a maximum distance of 210 miles. These rates per car apply regardless of weight and [fol. 1818] originally published in Item 2040 of Texas Lines Tariff 36C, effective October 15, 1927, for a maximum distance of 150 miles but were amended effective March 17, 1932 to provide for a further extension up to and including 210 miles. It will be observed the rates for account Texas & New Orleans Railroad and the Waco, Beaumont Trinity & Sabine Railway apply on hardwood logs to be manufactured and reshipped to Texas by the net rates shown in Paragraph G instead of the higher gross rates to the transit point named in Paragraph F, provided the consignee at transit point gives a surety bond to the railroad guaranteeing payment on gross rates of any shipment not entitled to the net rates. Item 2035B (supplement DD, effective June 29, 1930) provides for rates on logs, all kinds, with no restriction as to destination of the manufactured product except some Texas & New Orleans Railroad stations (Paragraph A), the rates do not apply on pine logs. The rates named are applicable via all important Texas carriers and for 160 miles and less are the same as the gross rates named in Paragraph F of Item 2040H. For over 160 miles they are slightly higher but for these distances the rates are only applicable between stations on the Missouri, Kansas, Texas Railroad of Texas, St. Louis Southwestern Railway of Texas and Texas and New Orleans Railroad. Briefly stated, it may be said generally the Texas rates apply in dollars and cents per car, regardless of weight, with a lower net scale in effect when the product is shipped

to Texas (Item 2040H) than the unrestricted scale in Item 2035B.

I made a tabulation for the distances up to and including 170 miles and have shown the Texas rates per car, regardless of weight as shown in the two larger items No. 2040H and 2035B, as well as the rates for the same distances under the Cummer Scale and the I. C. C. scale for cars weighing sixty, seventy, eighty thousand pounds respectively. In these rates there are no restrictions as to [fol. 1819] the length of the logs. In some instances the rates are limited to hardwood logs on certain lines. The rates are generally applicable to logs on the particular roads. The lower of the two rates shown in this statement termed Item 2040H applies on hardwood logs generally speaking and applies where the manufactured product is shipped to destinations in Texas. Item 2035B, which is cited here, applies on all logs of all kinds and the manufactured product to be shipped to any destination. Under weight of sixty thousand pounds, the Cummer Scale would exceed slightly the Item 2040H rates for the shorter distances but when you reach the 75 miles the Cummer Scale for sixty thousand pounds would be less than the first column rates. That is to say, for seventy miles and downward the Cummer Scale is slightly lower. For seventy miles and upwards, it is slightly higher than the first column Texas rate. Now, for the weight of seventy thousand pounds, the Cummer Scale would be higher in each case up to 170 miles than the rates in Texas shown in Item 2040H. That is true up to 100 miles and over 100 miles the Cummer rates are less except for distances 120 to 110 miles. There is a difference of forty cents under the Cummer Scale in excess of Item 2040H. At eighty thousand pounds the item 2040H rates would be less than the Cummer Scale rates for all distances up to 140 miles. For 150 miles and over 140 miles the Texas rate per car would be $28.00 as compared with the Cummer Scale rate of $27.20 and for (P. 115B of tes.) distances in excess of 140 miles the Texas rate of $30.00 per car would exceed the Cummer Scale of $27.20 per car and $29.60 per car for the distances of 160 and 170 miles respectively. The Texas rates are ma- [fol. 1820] terially lower in all instances than the rate that was charged for the transportation of these particular logs with which we are here concerned. The rate charged was

approximately twice as high at sixty thousand pounds on an average and still higher at seventy thousand pounds and at eighty thousand pounds three times as high in some instances but I would say two and a half times as an average. Item 2035B rates are lower than the Cummer Scale rates for sixty thousand pounds to a distance of twenty miles and for greater distances the Cummer Scale rates are lower than Item 2035B. There seems to be a material difference in the percentage for the maximum distances. For one hundred miles and under the Texas rate on Item 2035B is $23.00. The Cummer Scale for sixty thousand pounds would be $15.60. The seventy thousand pounds under the Cummer Scale rate would be $18.20, compared with the Texas rate of $23.00 and at eighty thousand pounds it would be $20.80. At fifty miles, Item 2035B is $13.50 and the Cummer Scale is $12.60. The difference there is only ninety cents a car. The seventy thousand pounds at the Cummer Scale rate would be $14.70, which is in excess of the Texas rate as shown in Item 2035B. At eighty thousand pounds the Cummer Scale would be $16.80 and the high Texas Scale would be $13.50. For fifty miles the high Texas rate of $13.50 per car is practically half of the I. C. C. rate of $27.00 per car for sixty thousand pounds; for seventy thousand pounds the I. C. C. rate would be $31.50 and for eighty thousand pounds $36.00. At 100 miles Item 2035B rate of $23.00 would be materially less than the I. C. C. rate of $36.00 per car for sixty thousand pounds and $42.00 per car for seventy thousand pounds and $48.00 per car for eighty thousand pounds.

[fol. 1821] This tabulation offered in evidence as Claimant's Exhibit 16A. These so-called transit rates in this tariff I would term paper rates because they have two sets of rates in the particular tariff, one applicable on the gross basis, as it were, while the net rates are materially lower, but as a matter of fact the gross rates are not charged; a bond is given to the railroad carrier guaranteeing the reshipment of the outbound product to the rail carriers and the gross rates are of no benefit whatever for comparison purposes. The net rates are the going rates.

It is correct that there is a contract and bond to ship the outgoing products over the lines of the carriers. The transit rate is the rate paid. That is true in respect to Item 2040H and 2035B also. Item 2175 provides for a rate of

$3.15 per car on pine logs in trainloads of ten or more cars not exceeding a distance of fifteen miles between points on the Nacogdoches & Southwestern Railway. That is per car regardless of weight. All rates in Texas are rates per car regardless of weight in this tariff. Fifteen miles under the Cummer Scale for sixty thousand pounds, the charges per car would be $10.26 against $3.15. The Texas per car rate for that distance would be $7.00 per car and $9.50 per car under Items 2040H and 2035B, respectively. Item 2180 provides for a rate of $2.25 per car on logs to Wydock, Texas, via Caro-Northern Railway from Strongfield, Texas, for 11.8 miles and from Winder for 3.8 miles with the understanding refund of charges on six cars of logs will be made when one carload of lumber manufactured from such [fol. 1822] logs is shipped to final destination. I note in Item 2075 that the rates shown therein apply on logs of all kinds with no restriction as to destination from points on the St. Louis-Southwestern Railway of Texas for a distance of 75 miles. In other words, the rates shown in Items 2075 is the same as those shown in Item 2040H without any restriction as to kinds of logs, or the destination to which the manufactured product is shipped.

Item 2015A applies only on ash logs to Houston, Texas for a distance of 150 miles with no restriction on the destination of the manufactured product. Those rates on the ash logs in that item are the same as the lower Texas scale in Item 2040H.

Item 2040H applies not only to ash logs but is confined to hardwood logs over certain roads. The other roads adopted the rate regardless of the manufactured product as is shown by the tariff. The tariff shown on Claimant's Exhibit 11A is an adoption of the Texas Scale I have already shown, the net Texas Scale, or the rates shown in Item 2040H, applicable to and from stations on the Gulf Coast Lines. It is correct that there is an extension of the lower of the two Texas rates. (P. 120B of tes.)

Claimant's Exhibit No. 12A2 purporting to be a true copy of a rate schedule on file with the Georgia Public Service Commission of the Georgia mileage scale, that scale of rates was made effective about 1921 and it has been there since, long prior to 1928. I don't recall just how that mileage scale compares with the short log rate for

all distances. It is approximately the same, is my recollection, as the rate in Florida on short length logs. It is [fol. 1823] slightly higher than the scale in Florida applicable on short length logs, though at some distances lower. These Georgia rates are substantially lower than the rate charged for the transportation of these particular logs with which we are particularly concerned. I am talking about the rate charged for the transportation of these particular logs, that is, the I. C. C. Scale. The Georgia rate is substantially lower than that. Under the Georgia Scale there is no bond required by the railroad for the reshipment of the outbound product and no policing of the shipments. As a matter of fact, I cannot recall any instance of any logs moving in the State of Georgia except on this basis where they were reshipped via water or rail. As a matter of fact, the tariff does not require reshipment by rail. There is no bond given and no contract made.

Claimant's Exhibit 12-A-1 is a statement showing mileage commodity rates in cents per car on logs, native wood; bolts, native wood rived or split, with bark on, applicable only on intrastate traffic for stations on the Nashville, Chattanooga & St. Louis Railway, Atlanta division, for distances up to and including one hundred miles. Those rates are per car, in cents per car, regardless of weight, and they range from a rate of $12.00 per car, regardless of weight for a distance of 25 miles and under, up to $20.00 per car regardless of weight for distances up to 100 and over 75 miles.

For fifty miles, a car of seventy thousand pounds, at the N. C. & St. L. rate, would be fifteen dollars, whereas, the Cummer Scale would be $14.70. At one hundred miles, the [fol. 1824] N. C. & St. L. rate would be twenty dollars and the Cummer Scale would be $18.20. At eighty thousand pounds for a distance of 100 miles the Cummer Scale would be $20.80 or slightly in excess of the N. C. & St. L. Railway rate of $20.00 per car. For fifty miles the Cummer Scale would be $16.80 while the N. C. & St. L. rate would be $15.00. At eighty thousand pounds the Cummer Scale would be slightly more than the N. C. & St. L. intra-Georgia rate and at seventy thousand pounds vice-versa. With respect to the rate that was charged the I. C. C. rate is more than twice the N. C. & St. L. intrastate Georgia Scale. It is correct that in both of these we are dealing with single

carload movements as distinguished from trainload movements.

The measured distance to Panchitula, Louisiana, from the list of stations shown at Item 15A of supplement No. 10, I. C. C. No. 7835, issued March 3, 1933, being a part of Claimant's Exhibit 8A, ranging from fifty miles to a maximum of seventy miles, Bogue Chelt is the furthermost point, the distance being seventy miles. The rate is sixteen dollars per car, regardless of weight. This Supplement No. 8 to I. C. C. A7528, Seaboard Air Line Railway Company, being part of claimant's exhibit 5A, was introduced in the record, and this is a corrected copy. The previous exhibit that showed this failed to include the correct page. This was typed on the back of the page in the previous exhibit. There is a record here to show the level of the Cummer Scale and of the so-called I. C. C. rate. The measured dis-
[fol. 1825] tance is from Middleton, North Carolina, to Boykins, Virginia, which is 44 miles. The measured distance from stations on the Louiston Branch is 35 miles from Louiston and the rates for all stations shown are $2.50 per thousand feet, minimum four thousand feet per car. At the average weight of twelve pounds per foot, the rate for the distance of 44 miles would be $2.50 per thousand feet under the Cummer Scale and under the I. C. C. Scale it would be $5.40 per thousand feet. For a distance of 35 miles the rate under the Cummer Scale would be $2.05 per thousand feet and under the I. C. C. Scale $4.80 per thousand feet.

From Middleton, North Carolina, the Seaboard Air Line rate to Boykins of $2.54 per thousand feet is slightly less than the same amount for the same distance under the Cummer Scale.

I have been associated with lumber companies and lumber associations for the past fifteen or sixteen years. I have examined these tariffs that have been filed in evidence. I know of no important milling point which has not been given these New rates, per car regardless of weight, with the exception of points on the Atlantic Coast Line Railroad.

Objection by Mr. Alston. (P. 125B of tes.)

The destinations described in the tariffs include within them substantially all the important milling points within the respective States to which they refer. Most of the rates

are on a mileage basis but some of them are confined to specific destinations.

I have general knowledge of the important milling points in the Mississippi Valley and the Southeast and the impor-
[fol. 1826] tant milling points in the Mississippi Valley and the Southeast, and the important ones are covered in those tariffs.

I do not know of any important milling point in that territory which are not described in those tariffs.

I cannot recall any now. There may be some not included in there but I am not positive. I know of none. I have a connection with the Florida-Louisiana Red Cypress Company. My services are at the call of the Cypress Manufacturers who are members of the Florida-Louisiana Red Cypress Company. The Florida-Louisiana Red Cypress Company are the selling agents and sell the out-put of several of the largest operators who are members of the Southern Manufacturers' Association by whom I am employed. I am not employed directly by the Florida-Louisiana Red Cypress Company. I have made an effort to determine something about the outbound movement of the Wilson Cypress Company over the Atlantic Coast Line Railroad. I checked the outbound carload movement of lumber of the Wilson Cypress Company at Palatka, Florida, during the period from April 1st, 1931, to October 31st, 1932. I started April 1, 1931, because that was the date the Florida-Louisiana Red Cypress Company took over the sales of the Wilson Cypress Company and I had access to the records of that company beginning that date. The Florida-Louisiana Red Cypress Company are the selling agents of the Wilson Cypress Company and for other cypress companies. Yes, they have the record of the destination of the various cars of cypress sold.

[fol. 1827] Objection by Mr. Alston on the ground that the testimony is based on some kind of a record which is not produced instead of the witness's own knowledge.

During the period between April 1st, 1931, to October 31st, 1932, the Wilson Cypress Company shipped 600 cars of lumber over the rails of the Atlantic Coast Line Railroad. Of the entire movement of 600 cars moving over the Atlantic Coast Line Railroad, including cars moving to points

on the Atlantic Coast Line Railroad from neighboring states the average haul that the Atlantic Coast Line enjoyed was 381.6 miles per car. I made those computations of miles from the original bills of lading, original memorandum copies or part of the bill of lading, and in that way determined the haul of the Atlantic Coast Line Railroad.

Cross-examination.

By Mr. Alston:

Bill of lading is made up in triplicate and shipping instructions are given to the carrier. These consist of the original bill of lading, memorandum copy of the bill of lading and shipping instructions. The shipper is given back the original bill of lading and the memorandum copy and the carrier retains the copy termed the shipping instructions. No, I didn't make up the bill of lading. I did give the shipping instructions for all those cars. I was not in Jacksonville when I gave them. The shipment was from Palatka. No, I didn't check up the physical movement of the shipments. I can explain how the shipping instructions are handled. The official employees of the Florida-Louisiana Red Cypress Company, are in Jacksonville on the 8th floor of the Barnett Bank Building and my office is on the 7th floor of the Barnett Bank Building. The shipping instructions from the Florida-Louisiana Red Cypress [fol. 1828] Company to the Wilson Cypress Company on any one line, or the orders rather, are referred to me for routing instructions and the routing instructions of the Florida-Louisiana Red Cypress Company are passed on to the Wilson Cypress Company at Palatka. Yes, I passed them on.

I remember when the Georgia Public Service Commission about 1923 submitted a proposed or tentative rate on logs and asked for objections. (P. 130B of tes.) I remember that objections were filed on the part of the shippers. I don't know that the carriers objected to the rates as a whole. As I recall, I was before the Georgia Public Service Commission at the time they submitted a tentative scale, a scale of rates on logs for operation in the State of Georgia, which were not acceptable to the carriers, but later, the carriers made some compromise offer and stated if that compromise scale was approved by the Georgia Commission it would be satisfactory to them. The Commission took

that compromise scale and entered an order on the 15th day of April, 1925. They submitted a corrected scale to the shippers and carriers, which was the outcome of that hearing you have just referred to. I don't recall whether the Georgia Commission ever issued an order. I know that the rates never became effective. I know that there was an order issued to become effective a certain date. Yes, that was in 1925. It is my recollection that the shippers asked for a postponement of the effective date of that order because they objected to it. I don't remember the date of the hearing had on that order. I couldn't say that the [fol. 1829] effective date was postponed from July 1st, 1925, to August 1st, 1929. There was a hearing held on the Commission's order. I know the shippers objected. I cannot speak for the railroads. At that hearing this Florida situation was not injected into it as I know of. Yes, I was present at the meeting before the Georgia Public Service Commission held in July, 1925. I think I attended all of those meetings. I don't recall any complaint about the rates in Florida. I cannot recall that there was a complaint because of the rates in Florida, the relation of the rates in Florida.

Our objection to the Georgia scale, as we called it, was that it was prohibitory. No logs could move on that scale because traffic couldn't stand it down there. It was more than the traffic could bear.

I remember Mr. W. E. Gardner. He is dead now. I am not sure whom he represented in that hearing in 1925. He was formerly with the Georgia-Florida Sawmill Association and then he was assistant District Manager of the Southern Pine Association with headquarters in Jacksonville. Yes, he was also representing the Georgia Forest Products Association. I don't remember that he testified that "should the Georgia Commission require these new and revised and greatly increased rates to go into effect, it will have the effect of moving industry located at this time in Georgia to the neighboring state of Florida where even the present rates are much lower than the Georgia scales".

I don't remember that that was concurred in by Mr. Farrish, representing the Georgia-Florida Association, Mr. Moore, of the Southern Mills Association, Mr. Grady of the Augusta Traffic Bureau, myself of the Savannah River Lumber Company or Mr. J. D. Webster representing Mr. Simmons of Bainbridge or any others.

[fol. 1830] I don't remember whether I testified that "We could not pass the increased cost on to the consumer because the manufacturer in Florida still has the present rates and competitive conditions would not permit us to pass the increase on to the consumer". I don't recall it. I may have done that. The proposed Georgia Scale was approximately the same as the I. C. C. Scale now existing and as existed then. We were opposed to that rate because we felt that the then existing rates on logs in Georgia were too high even then and to increase the existing rates further would work an undue burden on the lumber industry. I might go a little bit further in this Georgia adjustment by saying at that time I was connected with the Savannah River Lumber Company and due to the fact that rates on logs in Georgia were so high the Savannah River Company spent approximately $130,000.00 in building some river barges and tugs to handle the logs by water and that kept them from trying to gain further reductions from the railroads on logs. I couldn't say whether the effect of the difference in the rates in Florida and the rates which the Georgia Commission then had in opposition was sufficient to give the Florida shippers a benefit in the markets. I think in this Georgia case where the comparisons were made with the existing rates in Florida that they perhaps used the Class P scale. I cannot say whether it was my position then that with the Florida Commission rate in existence and the Georgia Commission proposing an increase over the existing rates in Georgia, would have the effect of injury to the Savannah River Lumber Company and others in like positions in the markets. As I just said, the Savannah River Lumber Company could quit shipping their logs by rail and they were personally not interested in what the rate was (P. 135B of tes.).

[fol. 1831] I said the Georgia rates were so high at that time that we sought reductions and not increase and we failed, and then the Savannah River Lumber Company built barges.

Q. If a shipper or producer at Bainbridge or Thomasville, or any of those Georgia points, had a rate for intrastate points in Georgia which was higher than the producer had in Florida for a like haul, would that have given those Florida shippers any preference in the market?

Objection by Mr. Adair.

A. I couldn't say. I couldn't say because the Florida operator had a lower rate to destination than the Georgia operator, that he could necessarily sell his lumber cheaper in the market than those in Georgia that paid a higher rate on logs. I cannot recall that I said in the Georgia hearing that we could not pass the increased cost on to the consumer because the manufacturer in Florida still has the present rates.

Q. If A is a manufacturer of logs on the North side of the line between Georgia and Florida and B is a manufacturer of logs on the South side of the line and A is obliged to pay more to the carrier for his logs to the mills than B pays for his and they both are operating under the same circumstances and conditions and they both compete in the same markets, which would have the advantage?

A. You mean if the logs of A and B move to the same sawmill?

Q. No. A manufactured on the North side of the Georgia line and B on the South side of the Georgia line.

[fol. 1832] A. It is impossible to answer that question because the sawmill manufacturing the logs originating in Georgia would no doubt have a lower rate on his outbound product to the sawmill operating in Florida.

If they had the same rate on outbound product and all circumstances and conditions in respect to the movement of logs inbound were the same, the man that had the cheaper rate would perhaps be able to sell his lumber cheaper. In other words, to the extent of the difference of the cost of the two rates of getting the logs into the mill, the man that got the cheaper rate would have the advantage of the man with the higher rate, if he paid the same price for his logs and all other conditions were identical.

I don't recall the comparison that Mr. Price made in this case as to the difference in the Georgia-Florida intrastate rates and the so-called Cummer Scale of rates. I suppose it is correct, for instance, that at 170 miles the Florida interstate rate on a basis of fifty thousand pounds per car would be $18.50 and the Georgia-Florida interstate rate was $47.50.

Q. Now, let's take a shipment, for instance, from Stringer, Florida, to Bainbridge, Georgia, 51 miles. That is interstate movement and the rate was $27.50, and take a shipment from Lake Butler, Florida, to Jacksonville on

a fifty thousand pound car. The discrimination against Bainbridge is $17.00. Is that your recollection?

A. I wouldn't necessarily say that would be a discrimination there.

A movement of logs to Bainbridge wouldn't be competitive with a movement of logs to Jacksonville even if the [fol. 1833] rates were the same. Lumber wouldn't move to Bainbridge through there and be marketed—marketed and manufactured. The rate would be too high, the interstate rate. I don't think it was actually being done. I don't know how many sawmills there were on the Atlantic Coast Line at that time. They didn't draw the logs from Florida and I don't think they could. I don't see how they could possibly pay that freight rate and compete in any markets with the Florida shippers. I am sure they couldn't compete with any market, not only the Florida market.

Q. Let me show you. Suppose that point there is in the forest, X, and you shipped to point Y 100 miles distance in Florida and the logs between those points would cost, a car of logs, about $21.00 for freight, cost about $21.00 less than if you shipped the same car from X to Z, Z being across the line in Georgia, and suppose it takes three cars of logs to make one car of lumber and suppose the manufacturer at Y and the manufacturer at Z were competing in Baltimore, Washington or Boston and such places, which one would be at an advantage or disadvantage, so far as the rate element is concerned?

A. I think I answered your question.

Q. So far as that rate element is concerned, as I understood your answer, the manufacturer at Z would be at a disadvantage, is that right?

A. I think he would be at a disadvantage if he had to draw his logs from Florida but I don't see how he could get any logs on that freight rate, he couldn't possibly pay the freight rates (P. 140B of tes.) in competition with any territory whatever.

If he were actually manufacturing at Z, which we will say was at Bainbridge, I would say he was getting his logs [fol. 1834] from Georgia. He wouldn't pay the interstate rate to the mill if he got his logs in Georgia. If the Georgia rate was the same as the interstate rate the haul in Georgia would be in a bad fix.

Q. In the markets of competition as compared with the Florida men? Am I right?

A. If all things depended upon the actual cost of logs in determining competitive markets.

Q. I am asking now as to that one element, as to the element of the cost of the logs in the mills.

A. The cheaper the rate, the cheaper the cost of his logs.

Q. And the cheaper the cost of the lumber?

A. I wouldn't say that.

Q. As far as that element is concerned is it so?

A. The cost of manufactured lumber would have no bearing on the cost of transportation of logs.

Q. Do you mean the cost of getting the logs from the forest to the mills would have nothing to do with getting the lumber in the markets?

A. I didn't say that. I said the cost of manufacturing the lumber in the mill had nothing to do with the cost of the transportation of the logs. The cost of getting the logs into the mill has an effect upon the cost of the lumber in the market. The man who could manufacture it the cheapest and got it to the market cheapest has the advantage in transportation cost.

Q. Now, give me a definition of a reasonable rate on which a shipper would have the right to require a railroad to transport his shipments as you have been using the words "reasonable rate" during this evidence.

[fol. 1835] A. Well, that is a pretty big question. There are a good many features in the question of a reasonable rate. As a matter of fact, as a hard and fast rule, I couldn't say what would be a reasonable rate. I haven't any idea.

I don't recall having used the word, reasonable, a good many times but there are a good many factors to consider in determining what is a reasonable rate. From the standpoint of the shipper the most important question is what the traffic will bear. The volume of the traffic would be a factor to be considered by the carrier and the cost of service, of course, cost of service to the carrier and value of the service to the shipper. Competition is another factor which is very important, competition between carriers themselves and competition of other means of transportation. I think that covers it. The fair return or a return on the property of the carrier would have to have some consideration, of course. We were getting consideration on the cost of service to the carrier. I don't mean that I would extinguish the cost of the service for the return on the property. I imagine the carriers would take that into

consideration. Not only the out-of-pocket cost but the overhead cost. The return would be taken into consideration, too. A rate could be reasonable otherwise and still be a discriminatory rate in some instances. It might be said that the recently established rates are such that they give the other manufacturers an advantage over the mills who do not enjoy those revised rates. That might be true of these recently established rates that I have been testifying about today on these new tariffs.

[fol. 1836] Q. Now, under the laws of Florida is it not necessary that the carriers' rate shall not make any unjust discrimination for the transportation of freight of any description?

Objection by Mr. Adair to the witness being made a witness as to laws in Florida. (P. 145B of Tes.)

A. I don't know just how the law is. It may or it undoubtedly does apply not to all traffic but to intrastate traffic.

I think it is perhaps true within the State of Florida that you couldn't give one shipper an advantage over the other.

Q. Now, haven't you got to go further, Mr. True, and also provide a rate which will not discriminate against interstate commerce?

A. I don't know of any law in Florida covering that.

Q. I am not asking for any law in Florida. If you mean in the sense of the law in the state, I am talking about the general law.

A. The Interstate Commerce Act prohibits discrimination against interstate commerce.

Objection by Mr. Adair that the inquiry is not concerned with discriminations against persons and localities or discrimination against interstate commerce.

A. Yes, the Interstate Commerce Act also prohibits discrimination against places and persons in Interstate commerce. Yes, the rates which are now in effect for the transportation of logs in Florida under the order of the Interstate Commerce Commission are the same as those which have been in effect for interstate transportation between Florida and Georgia since February 8, 1929.

[fol. 1837] Q. I have before me now, the record of the hearing before the Georgia Public Service Commission in

its docket No. 16019 at Atlanta, July 13, 14 and 15, 1925, and I call your attention to this part of the report which purports to be your examination and you are quoted there under direct examination by Mr. Gardner. I will read you a little of it. I will begin at page 13: "Q. Mr. True, just at that point please state the additional charges you have to pay under the proposed rate in the course of one year's business. A. $8,374.68, covering the movement of 1,534 cars in one year's business. Q. That $8,374.68 would be an increase in the cost of production of your lumber, would it not? A. We could not pass the increased cost on to the consumer because the manufacturer in Florida still has the present rates and we could not. And competitive conditions would not permit us to pass it on to the consumer." With that before you, please state if you gave that evidence at that time.

A. I don't recall the exact testimony in that case but this seems to be the minutes of that meeting and it may be true that I made that statement.

I would say that that statement is true to this extent, that any increase in cost of transportation could not be passed on to the consumer today. In the fifteen per cent case the slight increase on lumber of twelve cents per net ton was absorbed almost universally by the lumber industry because they couldn't pass it on to the consumer.

Q. I am not asking that. I am asking you if it was not true as a matter of common sense that the manufacturer had his present rates, that is, the Cummer scale of rates. That is right, isn't it?

[fol. 1838] A. I don't know whether that had reference to the Cummer Scale or not.

I don't know what rates they had in Florida in 1925. Yes, I know that the Cummer Scale of rates went into effect long before then. I know the Cummer Scale of rates were in effect. My impression of that testimony is that I was merely concurring in some of the statements that may have been made by other representatives because I see in my testimony on page twelve, that I stated there that we, meaning the Savannah River Lumber Company, had just constructed a tug boat and six barges for operation on the Savannah River in supplying their Port Wentworth mill with logs. This barge line was constructed at a cost of $130,000.00. I am convinced that due to the fact that the Savannah River Lumber Company had taken that action that

we were not at that time needing any adjustment of the rail rates on logs in Georgia. I made a statement of conditions as I found them. Those conditions mentioned in that quotation from that paper of this evidence are not eternal as far as the Savannah River Lumber Company is concerned. The rates on logs in Georgia were too high.

Q. That does not get at it, not at what you are there testifying. You were testifying that Georgia should not increase her log rates and that Florida still has the present rates and the Cummer Scale was the present rate and they could not be passed on.

Objection by Mr. Adair.

A. I can not say what the comparison was at that time. Comparison was made at that time or I wouldn't have made that statement. We sought reductions. I dare say that is my language. The intrastate rate must be so fixed and the interstate rate structure be sufficient to make the manufac- [fol. 1839] turer contribute his part to the return which the Interstate Commerce Commission fixes for railroads. It is true generally that all or nearly all of these new rates are based upon a flat pay without regard to size of car or weight of the load.

Q. Now, is it not essential for a railroad to tell what it is getting and what it should get in the transportation of its freight per ton miles or some other unit of ascertainment?

A. They can determine that on the rate per car, regardless of weight.

Q. I ask you now if that is not one of the essentials in railroad matters?

A. Yes.

You can avoid discrimination against shippers by putting in the same rate that the other roads have. (P. 150B of tes.) The rates are per car, regardless of weight. The same for a car of sixty thousand pounds as for a car of one hundred twenty thousand pounds, that applies regardless of the size. If X asks for a car and gets one of sixty thousand pounds capacity and Y asks for a car and gets one of one hundred twenty thousand pounds capacity and they move from the same point of origin to the same point of destination over the same railroad and same train, X and Y would each pay the same under that plan if one used a small car in preference to waiting to get a cheaper

rate by waiting for a larger car. If the railroad furnished one man with one size car and another shipper with another size car, I don't know whether that would be discrimination [fol. 1840] or not. If X got twice as much logs hauled as I got for the same price, one would have a cheaper transportation cost but I don't know whether that would be a violation of the discriminatory section of the Act. Under those circumstances I don't know whether discrimination would accrue.

Q. Now, do you advocate the per car basis as the measure of ascertaining the matter under consideration here?

A. No, sir; these per car rates have not been sought.

Q. They have not anything to do with it?

A. No.

Q. Do you know of any place, any case where any such method of stating rates has been sustained?

A. Yes, sir; they were sustained in Texas, since 1927.

Q. Is there any limitation over it?

A. I don't know.

Q. Do you know in the case of the Seaboard Air Line Railway vs. Lumberman's Company, 168 Georgia, at page 855, that the Supreme Court of Georgia held:

"As held by the Interstate Commerce Commission in Leonard v. Railroad, 3 I. C. C. R. 241: 'Prima facie the system of charging by weight is more just than any other. It is the only system whereby the charge is made proportionate to the service rendered. It is the only system whereby inequalities as between shippers, resulting from differences in the size of a car, can be obviated. As long as those differences exist, there is always room for favoritism, unless the carload is accurately apportioned to the size of the car; and this we think has never been attempted, for the reason, doubtless, that because of the great diversities it was seen to be impracticable. The reason ought to be very imparative which would require the abolishment of a rule which excludes favoritism to make way for another which not only admits of but invites it.' "

[fol. 1841] Does that express your view?

A. I am not familiar with that decision, but I just stated no one has advocated the rates on car of logs, regardless of weight, that I know of in Florida.

Q. Would the Commission permit it in your opinion?

A. Certainly they would permit it; they have permitted these rates all over the country to be put in on that basis.

Q. Are you familiar with the Supreme Court of Florida decision in the case of The Louisville & Nashville Railroad Company vs. Speed-Parker Inc., 137 Sou. 724. The Lumberman case was also quoted in that decision, and very much the same kind of decision was rendered?

A. No, sir; I am not.

Q. The Court held as follows:

"Furthermore any other construction would open the door to unfair and unjust discrimination, which are strictly forbidden. (Section 4614, Rev. Gen. Stats. as amended in 1925, and now appearing as section 6699, C. G. L., prohibits under penalty any common carrier from making any unjust discrimination in rates or compensation for transportation of passengers or freight of any description. If the contentions of defendant in error that the plaintiff in error could only charge a flat rate per car without regard to weight, be sustained, the carrier could furnish favored shippers with cars carrying 80,000 to 100,000 pounds, which they could load to capacity and get transported at the same cost per car as less favored shippers who were furnished with cars of less carrying capacity. Any construction which permits any shipper to load into any vehicle a greater quantity than his competitor does for the smaller, offends against one of the elemental principles underlying our statutory system of public regulation of common carriers; that is, uniformity of treatment to passengers and shippers, and the elimination of all unjust discriminations."

[fol. 1842] Is that your conception of that condition?

A. As I said, we have not advocated any rate on cars, regardless of weight, that I know of in Florida.

I was present at the hearing before the Interstate Commerce Commission Examiner in November, 1932, at the Mayflower Hotel in Jacksonville, in the reopened Interstate Commerce Commission proceeding and I gave testimony there. I heard the discussion and saw introduced a great many tariffs of the kind that have been introduced here and I have heard them under discussion. Generally speaking, those rates were primarily put in as an experiment to meet the active truck competition which the investigation showed

to exist. My testimony in Jacksonville in November was in respect to circumstances and conditions existing at points in the Mississippi Valley as compared with the circum-
[fol. 1843] stances and conditions existing in Florida with respect to the movement of logs. I did not testify as to the application of any of the tariffs at the hearing in Jacksonville in November. Yes, I heard others testify to them. They were not entirely the same kind of tariffs that I have been testifying to about here. We submitted the tariff sheets here that have been in effect for years and which were not established primarily to meet motor truck competition. Those tariffs were applicable in the State of Texas throughout, possibly on all lines, and in Mississippi, Alabama and elsewhere. It is true that at the time of the hearing in November the rates on the Illinois Central system per car rates applied and on the Yazoo & Mississippi Valley Road to approximately thirty manufacturing points east of the Mississippi River. It is my recollection that they applied to all manufacturing centers where there had been a request made on the Illinois Central for these rates. I have no means of checking them up but I have a means of checking up the manufacturing points. I know where a good many of the larger points are located. As to that situation last November, I do not know where those thirty points were located but I can tell you by looking it up if you want to know. (P. 155B of tes:) I have the tariffs with me, I thought I could refer to the tariffs if you wanted to know. The rates of the Seaboard Air Line and Central of Georgia Railroad applied to Montgomery at that time and I think Dothan was added later. I believe Montgomery was the only point at that time. That was the only mill we could locate at that time. Yes, they were applicable only to Montgomery and Selma. I expect it is correct that the rates of the Southern applied to Mobile and Selma and
[fol. 1844] York, Alabama, Chattanooga and Memphis, Tennessee, and Laurel and Corinth, Mississippi, those of the Mobile and Ohio to Columbus, Corinth and Meridian, Mississippi, Humbolt and Jackson, Tennessee, and Mobile and Whistle, Alabama, and those of the Columbus and Greenville Railroad to Columbus, Greenville, Grenada and West Point, Mississippi, and it is my recollection that the rates of the Gulf, Mobile & Northern, and St. Louis, San Francisco, east of the Mississippi River and Nashville, Chattanooga & St. Louis applied to all points on those

lines. I don't remember the exact points. I know the rates didn't apply to all stations. Along the Mississippi River the purpose was simply to furnish rates where sawmills were located.

Q. Now, let's get back to 1925, the rates in effect. I mean the rates which the Georgia Commission as I understand it, the rates which the Georgia/Commission in 1925 had ordered into effect in April of that year, to go into effect on June 1st, 1925, and which were sustained in the proceeding to which we have heretofore referred, were practically the interstate rates now in effect between Florida and Alabama. The Interstate Commission put the same rates into effect, the interstate rates in Florida and those went into effect on February 8, 1929, and remained in effect until March, 1931, though I believe officially, April 10, 1931, and the Commission then had a rehearing, reopened the proceeding and had a rehearing in that case, their first order entered in July 1928 was set aside by the Supreme Court and then they passed another order on July 5th, 1932, and the same rates are now the rates put into effect in Florida on logs the same as those they put into effect through the first order [fol. 1845] issued in July, 1928.

A. Yes, that was the I. C. C. Scale.

It is correct that that order was contested and it was reopened before the Commission and another hearing had and the hearing that was then had was the one I have testified about at the Mayflower Hotel in Jacksonville in 1932.

Q. Then followed the order of the Commission which is dated January 9th of this year and the rates upheld then were the same rates which had been put into effect, ordered into effect, intrastate by the Commission in 1928.

Objection by Mr. Adair that the order itself is the best evidence.

Q. Now, that rate is again in effect is it not?

Same objection by Mr. Adair.

A. Yes, the rates that were applicable during the period from February 8th, 1929, until March 31, 1931, were the rates ordered here by the Interstate Commerce Commission. There were no changes in the rates in Georgia. During that period there was a heavy movement in that local trainload movement to Palatka and Homassasa.

Q. Do you mean in the Northwestern part of the peninsular of Florida?

A. Carbur and south.

If a shipment began at Carbur and went down south and instead of stopping at 170 miles went 180 miles, I think the rate on that ten miles was the Class P rate. I don't know what the relation would be between the rate for that last ten miles and the interstate rate now in effect and which [fol. 1846] has been in effect since February 8th, 1929 but that would be quite unusual for a car of logs to move that distance. It is correct that after you pass 170 miles and go to 180 miles the rate becomes 8.33 if that is Class P rate.

Redirect examination.

By Mr. Adair:

Cars carry different weights according to their build and construction and capacity. On logs generally speaking, with the exception of Florida, the maximum load is the load limit stenciled on the car (p. 160B of tes.) which runs as high as 125,000 pounds but in Florida the maximum load on logs is 110% of the marked capacity of the car, not the stenciled load limit, and that worked to the disadvantage of the Florida shipper because if he loads a car of 80,000 pounds capacity, he is charged there at a weight of 110% of that or 88,000 pounds and if he loads in excess of 88,000 pounds the excess over that weight is charged double the going log rate. If he overloads more than 10% he is charged with the excess overload twice the going rate. The capacity of most of the flats in use for log transportation on the Atlantic Coast Line in Florida is eighty thousand pounds. Not all logs are transported in flat cars. Some logs are transported in gondolas. High sided gondolas are very nice for log loading. The marked capacity of these cars would run I would say from 80,000 to 100,000 pounds but the stenciled load limit which appears on box cars would be materially higher and would average I would say, about 125,000 pounds, that being the maximum load that could be loaded on the car and charged at the going rate in the Mississippi Valley but not in Florida. Yes, in Florida if [fol. 1847] there was 80,000 pounds capacity it could be loaded to 88,000 pounds, and if it was 100,000 pounds, it

could be 110,000 pounds with the excess charged at double. The minimum weight for which the shipper was charged under the Cummer Scale was 50,000 pounds. The minimum under the I. C. C. Scale was 40,000 pounds. It is a fact that if you loaded a 40,000 pound car of logs on the Cummer Scale you would still have to pay for the 50,000 pounds minimum. It is true that the Cummer Scale is to that extent somewhat similar to these new scale regulations regardless of weight that have now been put in in these other nearby states. It is similar to the extent that the rate may be lower but the minimum weight is higher or minimum loads. The railroad is insured either a substantial load at the rate per 100 lbs. or a minimum fixed charge if it is underloaded.

I have not personally checked up what the Wilson Cypress Company loading was during this period for which restitution is sought. I don't recall what the average of the Cummer Cypress Company was. I think it is desirable to have rates made at a per car rate basis regardless of weight to enable the shipper to load the cars heavier and by so doing, he is entitled to a lower rate than would otherwise prevail. I mean he would be entitled to a lower rate for the heavier loading and that should be reasonable from the standpoint of the carrier. These new per car rates that have recently been established in the Mississippi Valley and Southeast, are substantially lower than the so-called mileage scales that prevailed prior to that time but it is clear in my mind that the former rates were so high that the [fol. 1848] traffic couldn't move and I consider that these rates that have recently been established in the Southeast are more reasonable than the former rates. I don't know whether there is any substantial difference between the former minimum charge per car and the present charge per car regardless of weight. I have not made that comparison but the minimum, generally speaking would be 40,000 pounds per car, we will say. I should judge that the rates would be approximately the same—the rate, regardless of weight, is approximately the same as was heretofore charged for per car minimum.

Generally speaking, the topography of Florida is a low, flat country. The cars of the Wilson Cypress Company and Cummer Cypress Company are loaded by skidders. Of course, they have their own logging operators in the woods, but the logs are loaded on the cars with skidders. I am

not personally familiar with whether or not any of the cars employed in that movement were especially equipped for the transportation of logs. The loading by skidders and by machinery tends to heavier loading. I have no personal knowledge about any special equipment on the log cars. (P. 165B of tes.)

The I. C. C. has had this method of computing transportation charges upon cars regardless of weight before them several times. I can give an instance in which they had it before them. I have a memorandum on the subject. In the case of Virginia Lumber Corporation vs. Atlantic Coast Line Railroad Company et al., 165 I. C. C. 131, the rates charged on interstate shipments on lumber, staves, cross ties, logs and poles in carloads from points in Georgia to Jacksonville for Florida destinations and to Savannah, Georgia for export or coastwise movement, per car load was involved. That did involve rates on carload shipments that were published to apply per car as per classification. [fol. 1849] The Commission said: "Notwithstanding the absence of any provision for charging for excess in proportion, defendants collected charges on the total weight of the shipments. They contend that the carload unit of weight was the minimum named in note 20 of Classification. Complainants contend that the Class P rates applied per car regardless of the weight in excess of the minimum. This same question has been presented in several recent cases and it has been decided that rates published per car without provision for excess in proportion are applicable on the entire contents of the car without regard to the weight in excess of the minimum. Brooks-Scanlon Corporation vs. Atlantic Coast Line Railroad Company, 113 I. C. C. 237. Baehl & Company vs. Central of Georgia Railroad Company, 115 I. C. C. 679; West Florida Lumber Company vs. G. F. & S., 129 I. C. C. 62, and Batson-Cook Company vs. C. V. Railway Company, 132 I. C. C. 703."

The Commission goes on to say: "We reach the same conclusion here. The existence of the minimum weight in the exception is insufficient to warrant a finding that a rate published per car does not apply on the entire contents of the car. Only the most definite provision to the contrary could have that effect."

The outcome of that case was that reparations were awarded against the Atlantic Coast Line in excess of the per car rate regardless of weight. The per car rate regardless of weight principle was applied in that case.

[fol. 1850] Q. What, if any, reason is there why these new rates applying per car regardless of weight should not be applicable to determine the amount of restitution to be awarded in this proceeding?

Objection by Mr. Alston that the question calls for a conclusion of the witness.

A. I would consider those rates as a fair measure to determine the question of restitution in this case because I consider those rates reasonable in so far as they were necessary to be made effective in view of the rates previously existing to move the traffic. In other words, those rates were all the traffic would bear and I think by establishing those rates the carriers increased their revenue.

Those rates that formerly prevailed were so high that the traffic couldn't move on them. The shippers sought other means of transportation. This per car rate, regardless of weight has been in effect for many years in Mississippi and Texas. In this decision I have just cited, I don't know that the Commission approved or disapproved the principle there involved, but they did say that the existing rates applied per car regardless of weight and awarded reparation on that basis.

Objection by Mr. Alston.

I just wanted to correct that point. I don't know whether the Commission ever in fact approved that principle but it is in effect. It was in effect on interstate traffic and reparation was awarded in that case by the Interstate Commerce Commission and has prevailed in Texas for years throughout the state. The contemplated change in the Georgia general mileage scale on logs and intrastate commerce in about 1923, 1924 and 1925 was never actually effected.

[fol. 1851] Yes, this scale of mileage rates which I identified on yesterday, claimant's exhibit 12A2, is still in effect in Georgia. I spoke of being employed by the Savannah River Lumber Company and I spoke of that company hav-

ing spent a lot of money for barges and otherwise to transport its own logs. They spent that money because they considered the Georgia log scale of rates too high to move the traffic. I mean the then and now existing rates. During the time that I was employed by the Savannah River Lumber Company they had a logging contract with the Savannah and Atlanta Railway.

Objection by Mr. Alston to the witness testifying about a written contract.

As I recall it the contract with the Savannah & Atlanta Railway required a minimum per train of thirty cars, (P. 170B of tes.) I believe, and the distance from the logging camp to the mill was less than sixty miles, I think it was about 56 miles. The charge per car per train was $3.20 per car for thirty cars. I think that the minimum must have been about twenty cars per train. I don't remember the exact time that arrangement was in effect but it was in effect over a year, perhaps two or three years. I think a copy of that contract could be procured. I will endeavor to do so.

Recross examination.

By Mr. Alston:

In the case of Virginia Lumber Company vs. Atlantic Coast Line Railway Company et al., 165 I. C. C. 131, about which I have spoken, I don't know whether or not the question before the Commission was the construction of the tariff, which is referred to as Southern Railway I. C. C. [fol. 1852] A9879. They had not considered the interpretation of the tariff. I don't know what the intention of the Commission was. Yes, the interpretation of the tariff was the matter before the Commission. There was no provision in the tariff that the load in excess of the minimum was to be charged for excess in proportion. The tariff did provide that it was to apply per car (haul) as per classification. As far as this particular case is concerned, what the Commission did in this decision was to say what was the meaning or interpretation of the Southern Railway tariff, I. C. C. A9879, because those were the only rates involved. The other decisions cover other tariffs. In fact, the Commission has never ruled otherwise in any case that they considered. I think I have seen all of those decisions that the

Commission has made on the question of the interpretation of the tariffs.

In the other decisions which are referred to it the Commission says, "This same question has been presented in several recent cases and decided that the rates published per car without provision for excess in proportion are applicable on the entire contents of the car, without regard to the weight in excess of the minimum." Those are interpretations of tariffs.

Whenever the Atlantic Coast Line Railroad was required to make reparation they increased the rate so they wouldn't have that to do in the future.

Q. Didn't they make the rate to apply on the excess over the minimum?

A. I just stated that they corrected the tariffs so far as I know.

The tariffs were changed so as to make the rates over the minimum apply excess in proportion, which had the effect of increasing the rates. I never saw the case of Leonard vs. Railroad, 3 I. C. C. R. 241.

[fol. 1853] Q. Now, let's turn to this particular case and to the decision of the Commission dated January 9th, 1933, in its docket 18364, Georgia Public Service Commission vs. Atlantic Coast Line Railway, 190 I. C. C. 588 to 600. The Commission said:

"Generally we do not approve of rates published in amounts per car regardless of weight, and nothing contained herein shall be considered as an approval of rates so published on logs. The per car rates on logs are not here in issue, and no one has complained to us in any other proceeding that they are unreasonable, unduly preferential or otherwise unlawful."

It says those were not here in issue.

A. How could they be approved or disapproved if they are not in issue?

Q. Are you familiar with them?

A. Yes, I have just heard you read that portion of the decision. Yes, I have read it. I have not seen any later comments than that.

Q. Now, do you remember, or do you know, that the Court, the United States District Court, in these rate cases, 690, 691, 695, in dealing with these rates said: "In the evi-

dence of low tonnage rates recently made by other carriers, in their interpretation, we find nothing to require a different conclusion. A situation may thereafter arise requiring inquiry as to their discrimination but it throws little light on the revenue problem of the Atlantic Coast Line as an interstate carrier." (P. 175B of tes.)

Objection by Mr. Adair.

It is correct that I said that the Georgia rates which were in effect and which were shown by exhibit 12A2 were so high that the traffic couldn't move so far as the movement to Savannah for the Savannah Lumber Company is concerned. There was a great deal of objection by the Savannah River Lumber Company and other companies. The objection there was that the logging camp of the Savannah Lumber Company was adjacent to the Savannah River and [fol. 1854] the rail haul was approximately 100 miles and the Central of Georgia could not give them a rate thereon that the traffic could bear and for that reason they spent $130,000 to transport the logs by water. The record does not show that there were on the Atlantic Coast Line Railroad 65 mills and that the mills logging by common carrier had a production per month of 5,395,000 feet per month and that the mills logging by truck or team had 7,000,000 and that the mills logging by water 2,400,000 and that there was a total logging transportation of 16,600,000 feet per month. It does show that somebody offered evidence to that effect but it does not show it to have been proved.

I have no personal knowledge about this that you quoted there. I do not know how many mills were operated at that time in Georgia. I have no reason to question that but I certainly cannot concur in it.

By Mr. Adair:

I did not have any part in this so-called Florida log case in the proceeding before the Interstate Commerce Commission before the reversal by the United States Supreme Court. I did appear before the Georgia Commission in protest of any rates we already considered too high. There were certainly some movements of logs from February 8th, 1929, to March, 1931, and they necessarily moved in substantial quantities because in the operation of any logging business or lumber business you have your timber con-

tracted for and it must be shipped or you assume further losses. That this shipment moved from owners to owners of the timber would not change my reply because the timber may have been girdled, or even if the timber were owned by the mill they have contracts with woodsmen to cut [fol. 1855] the trees. Quite often cypress lumber is girdled several months before it is chopped down and if it is not cut down within a reasonable time after it is girdled the timber deteriorates. If it is girdled it should be cut down within a year. I didn't say it rotted, rather it deteriorates because of the sap stains and the pin worm holes in the lumber.

By Mr. Alston:

If the rates during this period were on a per car basis, regardless of weight, the charges would have been a certain amount per car as loaded which averages over sixty thousand pounds per car. In almost every case the maximum in Florida would be 88,000 pounds. I am not talking about the maximum in Florida because the maximum was not used in the lumber business, lumber trade. The maximum would be different in different localities. In Florida the maximum would be 88,000 on an 80,000 pounds capacity car, because 90% of the logs moved on the Atlantic Coast Line were at 80,000 pounds. 80,000 is not the maximum capacity of all cars in the United States. I don't know what the maximum capacity is for cars hauling logs. I would say that 100,000 pounds capacity car would be generally the largest car used. Yes, in many cars you can load the limit to 125,000 pounds. You can do that in Mississippi and the Southeast, but in Florida you cannot do that because the Atlantic Coast Line Railroad in Florida has seen fit to make the shipper pay double the going rate over 110% of the marked capacity of the car. The Atlantic Coast Line Railroad does not have different rules from those of the American Railroads Association over the country. The other lines observes them too in Florida. It is not confined to the Atlantic Coast Line. (P. 180B.) I [fol. 1856] know positively that it is not true in Florida on logs that you can load a car of 60,000 pounds capacity to 103,000 pounds capacity. You could load a car of 60,000 pounds capacity with logs in Florida to 66,000 pounds. Any load over 66,000 pounds would be double the log rate.

The rules were not changed so as to permit the loading of a 60,000 capacity car to 103,000 pounds, nor a 70,000 pounds capacity to 125,000 pounds. That hasn't been changed on the transportation of logs in Florida. I think what you have in mind is some provision that was made in the Southeastern territory in connection with the lumber rates but I am discussing the log rates, the transportation of logs. I am not sure whether the penalty for loading or overloading is confined to logs or lumber. I know when I discovered the fact that these shippers in the Mississippi Valley and the Southeast were not penalized when they loaded the cars heavier, I took it up with the Atlantic Coast Line Railroad and called their attention to the fact of what the situation was and I think Mr. Perrin's office has the file on it and they have not done anything so far, as I know of. I called that to the attention of the Atlantic Coast Line some time in November of last year by writing them a letter. I think I wrote it to Mr. Hinnant or to Mr. Doss. When I say that in Florida when the load exceeds ten per cent of the marked capacity of the car there is a double charge. I mean that on that excess the charge is actually doubled. You would have to separate the two weight or waybills or freight bills. They charge you twice as much for the excess as the other. If there were 98,000 pounds in an 80,000 pound capacity car, you [fol. 1857] would be charged for 88,000 pounds at the going rate and the excess of 10,000 pounds would be double the going rate. The penalties that I spoke of is an obsolete rule which I would term in the classification to which the tariff governing rates on logs refers to. It is generally conceded by the carrier throughout the country that the cars should be loaded heavier but in Florida they have never corrected that obsolete rule which requires the shipper to pay double the rate on any excess over 110% of the marked capacity of the car, whether it be sixty thousand pounds, eighty thousand pounds or one hundred thousand pounds capacity. That rule is in writing with the Florida Railroad Commission. I think it was approved by the Railroad Commission but it is in the tariffs of the Atlantic Coast Line Railroad. I think it is in the classifications. It is in their file of tariffs open to the public. Marked capacity of the car means just what it says on the car. If the marked capacity is eighty thousand pounds it specifies

that weight on the car, stenciled on there but on the car it would have the stenciled load limit which is the maximum limit you could load the car to. I certainly don't mean that the load limit and the capacity are the same. I mean that you would pay a penalty on any weight in excess of 110% of the marked capacity of the car and not the stenciled load limit. If the load limit on a car marked 80,000 pounds was marked 130,000 pounds and the car was loaded at 125,000 pounds, there would absolutely be a penalty on the weight in excess of 88,000 pounds up to 125,000 pounds. You are charged double the load weight. According to your tariffs you have charged it that way. [fol. 1858] It is a matter of record in this case and the tariffs have not been changed. I am not familiar with the decision of Leonard vs. Railroad, 3 I. C. C. Report 241. That decision was rendered September 25, 1889.

(Witness excused.)

Hearing resumed in Jacksonville, Florida, May 11th, 1933.

Present as before.

By Mr. Ashby:

We offer Claimant's Exhibit No. 17-A, being copy of the Atlantic Coast Line Railroad Company's local freight tariff, I. C. C. B-2555, duly certified by the Interstate Commerce Commission.

Objection by Mr. Alston.

T. M. True was called as a witness for the claimants and, after being first duly sworn, testified as follows:

Direct examination:

My name is T. M. True. Claimant's exhibit No. 17-A, being a copy of the Atlantic Coast Line Railroad Company's local freight tariff, I. C. C. B-2555, effective January 23, 1929, duly certified by the Interstate Commerce Commission, shows the rates on sawmill logs, carloads, viz., cypress, gum and pine, straight or mixed carloads, C. L. minimum, when loaded on standard flat cars, 3,500 feet per car in cents per thousand feet from stations on

the Atlantic Coast Line Railroad in North Carolina and Virginia to points on the Atlantic Coast Line Railroad in North Carolina and Virginia. This publishes rates from 85 points of origin to 13 points of destination. The rates so published can be summarized in a scale which is as follows, and which compares with the Cummer scale and the I. C. C. scale, using the basis of 12 pounds to the foot of logs.

Objection by Mr. Alston that the evidence shows that the territory, traffic and transportation conditions are not the [fol. 1859] same in Florida as compared with the territory covered by this Exhibit.

This is a true and correct tabulation on the basis of 12 pounds to the foot of logs which of the rates set forth in that tariff of claimant's exhibit No. 17A of the Cummer Scale and the I. C. C. Scale. I offer this tabulation as claimant's Exhibit No. 18-A. For 120 miles and over 110 miles the rate per thousand feet as published in the A. C. L.-I. C. C. B-2555 is $4.93, while under the Cummer scale, the rate for a like distance is $3.84, and the I. C. C. Scale rate for a like distance is $7.80. (Tes. P. 195B.) That rate in Exhibit No. 17-A is in effect today and has been in effect since January 23, 1929. In Exhibit No. 18-A, it shows there are cheaper rates than the general mileage basis that apparently was followed throughout the tariff in that tabulation. On page three of my statement I have shown point to point rates of distances and have compared those rates for a like distance under the Cummer scale and the I. C. C. Scale. Yes, some are lower and some are higher than the scale itself. The rate from Hollyridge, North Carolina, to Goldsboro, North Carolina, is 114.3 miles at $3.90. That is the specific rate published in claimant's Exhibit No. 17-A. That rate is approximately the same as the rate of $3.84 for a like distance, under the Cummer scale, while it is materially lower than the I. C. C. Scale for that distance, which is $7.80. When I speak of the I. C. C. Scale, I mean the scale that was prescribed by the order of the Interstate Commerce Commission for the transportation of logs on the Atlantic Coast Line Railroad in Florida, under which charges were made and for which restitution is now sought. That was the rate actually charged in this restitution case.

[fol. 1860] Cross-examination.

By Mr. Alston:

This scale in the last column which I refer to as the I. C. C. Scale of the last two pages of my Exhibit No. 18-A, is the same scale that the Interstate Commerce Commission fixed applicable between points in Florida and points in Georgia. I think that scale has been in effect on interstate shipments ever since February 8, 1929. The rates shown under the column I. C. C. scale in Exhibit No. 18A might have been applied between Virginia and North Carolina points in the period involved generally, but as the lower rates were in effect then, the lower rates governed. I cannot say that this I. C. C. scale applied in all instances between points in North Carolina and Virginia between February 8, 1929, to April, 1931, but I will say that this I. C. C. scale was in effect generally on the Atlantic Coast Line Railroad on interstate traffic between points in North Carolina and Virginia. I am not sure that it was limited to the Atlantic Coast Line. It was in effect in some instances on the Southern Railroad, approximately the same scale. I don't remember the comparison, whether it was identical or not, but I am inclined to believe they were. Those rates on the Atlantic Coast Line on Interstate traffic in the Carolinas and between the Carolinas and Virginia were the result of the action of the Interstate Commerce Commission involving interstate movements of logs.

Redirect examination.

By Mr. Ashby:

I offer claimant's exhibit No. 19A, it being title page and page 143 of Atlantic Coast Line Railroad Company's tariff, I. C. C. No. B-2512, effective June 5, 1928, duly certified by the Interstate Commerce Commission. We next offer an analysis of that tariff as Claimants' exhibit 20A, Exhibit 19A shows on said page 143 (index numbers 1 and 2) a rate between Farmville, North Carolina, and Wilson, North Carolina, a distance of 56.4 miles, of $2.61 per thousand feet of logs. The same page (Index Nos. 11 and 13) shows a rate on logs between Laurinburg, North Caro-
[fol. 1861] lina, and Wilmington, North Carolina, a dis-

tance of 132 miles, of $20.00 per car of 40,000 pounds, excess in proportion. The same page (Index Nos. 12 and 13) shows a rate on logs between Lumberton, North Carolina, and Wilmington, North Carolina, a distance of 117.3 miles, of $16.00 per car of 40,000 pounds, excess in proportion. The same page (Index Nos. 14 and 15) shows a rate on logs between Farmville, North Carolina, and Greenville, North Carolina, a distance of 58 miles, of $7.20 per car of 40,000 pounds, excess in proportion. The same page (Index Nos. 14 and 20) shows a rate on logs between Farmville, North Carolina, and Wilson, North Carolina, a distance of 56.4 miles, of $8.55 per car of 40,000 pounds, excess in proportion. These rates, compared with the Cummer scale and the I. C. C. scale for like distances and converting the rate first above mentioned from feet to pounds on the basis of 12 pounds to the foot of logs, are as follows. I have it set out.

When I refer to the I. C. C. scale, I mean the Interstate Commerce Scale, intrastate in Florida, which was in effect during the period for which restitution is sought. That tariff itself shows it was effective June 5, 1928. That tariff is still in effect today. Between Farmville and Wilson, a distance of 56.4 miles, the rate of the Atlantic Coast Line Railroad is $10.88 per car of 50,000 pounds, while the rate under the Cummer scale for a like distance is $10.50, and under the I. C. C. Scale for a like distance of $25.00. Between Farmville and Greenville, a distance of 58 miles the A. C. L. rate is $9.00 per car of 50,000 pounds. (P. 200B of tes.)

[fol. 1862] The Cummer scale for a car of the same weight and for the same distance is $10.50, or $1.50 per car higher than the present rate of the Atlantic Coast Line Railroad from Farmville to Greenville. Under the I. C. C. Scale it is $25.00.

Recross-examination.

By Mr. Alston:

Those mileages shown on my Exhibit No. 20A, were taken from the distance tables that are on file with the Interstate Commerce Commission, which are used in determining distances in computing freight rates. There is competition between the points shown. I cannot say

whether the Seaboard Air Line Railroad operates between Farmville and Greenville. I can't say whether the Seaboard Air Line Railroad operates between Laurinburg and Wilmington. I know that some points are served by one or more lines. I don't know what the shortest mileage between those places is. I didn't check up the mileage. I don't know what the competition is between Farmville and Greenville. I have no idea what is the other mileage of the competing road. It is not necessary for the road having the longest mileage to meet the competition of the shortest mileage. If he considers it a profitable business, he will. He can meet it if he wants to, even if he suffers loss I would think that in order to get the business he must meet it.

Q. Now suppose that this mileage, that those rates were made by the Atlantic Coast Line Railroad, not to fit their mileage between those points of destination, but to fit the competing mileage, would that be an element?

A. I don't know that it would. They might meet some competition that would prove a burden on other commerce. [fol. 1863] I have not checked the distance by any other route to determine whether it was a more direct route.

Redirect examination.

By Mr. Adair:

There is no law that I know of that requires a railroad company to meet its competition if it doesn't make money.

By Mr. Ashby:

(The title page and page 32 of Seaboard Air Line Railway Company's tariff 5, I. C. C. No. A-7187, certified by the Interstate Commerce Commission offered as claimant's Exhibit No. 21A. An analysis of the tariff shown on the claimant's Exihibit No. 21A, offered as claimant's Exhibit No. 22-A.)

Claimant's Exhibit No. 21-A being title page and page 32 of Seaboard Air Line Railroad Company's log tariff 5, I. C. C. No. A-7187, effective Interstate, July 10, 1926, and Intrastate June 1, 1926, duly certified by the Interstate Commerce Commission, shows on said page 32, a rate applicable to logs, carloads, when in lots of less than five cars,

per car of 4500 feet, from Kollocks, South Carolina, when from Bennetsville and Cheraw railroad stations, and from connections with spur tracks of the Malkeljohn Lumber Company at points between Bethune and Fulton, South Carolina, to Cheraw, South Carolina, of $13.00 per car, and a rate of $6.30 per car from and to the same points, when in lots of not less than five cars. In other words, this tariff shows a difference in rates when shipment is made in less than five cars from that of shipments made in lots of more than five cars. The rates for shipments of less than five cars are higher, approximately double. The move-
[fol. 1864] ments in trainload lots is practically one half of lots of less than five cars. The rates when in shipments of not less than five cars to Cheraw, South Carolina from stations shown is $6.30 per car of 54,000 pounds, while the rate for a like distance for a car of similar weight in shipments of not less than five cars, under the Cummer scale, is $9.23 per car; and under the I. C. C. scale the rates range from a rate of $13.50 per car for a distance of two miles and up to $21.00 per car for a distance of 35 miles. I don't remember whether this tariff is in effect today or not. No, it is not in effect now. It is true that this was omitted from the next subsequent publication of the Seaboard Log tariff. I was examining Log Tariff seven which is the current log tariff of the Seaboard and it does not show trainload rates to Cheraw, South Carolina. Effective January 3, 1928, they cancelled Seaboard Air Line Log Tariff No. 5. I find that they have omitted train lot rates on logs to Cheraw, South Carolina, as shown in our Exhibit No. 21-A.

Recross-examination.

By Mr. Alston:

Note A, on this log tariff means that it contains rates that are higher for shorter distances than for longer distances over the same route; such departure from the terms of the amended Fourth Section of the Interstate Commerce Act is permitted by authority of Interstate Commerce Commission Fourth Section Orders as indicated in individual items herein. That means where the tariff shows any departure from the Fourth Section of the Interstate Commerce Act that they have been permitted by the Commis-

sion. It has no reference to rates on logs to Cheraw, South Carolina, because if it did have any connection it would make reference to that. The trainload rates have been [fol. 1865] taken out since this was put in effect. The carload rates were omitted entirely when the tariff was issued. (Tes. P. 205B.) All the rates shown on Exhibit 21-A to Cheraw, South Carolina, published in Seaboard Air Line Railway Log Tariff 5, were omitted when Log Tariff 6 was issued January 3, 1928. None of those rates were in effect during the period beginning February 8, 1929; they were effective prior to that time.

Redirect examination.

By Mr. Ashby:

(Title page and page 332 of Atlantic Coast Line Railroad Company's Southeastern Tariff No. 5-B, I. C. C. B-2255, certified by the Interstate Commerce Commission, offered as claimant's Exhibit No. 23-A. An analysis of the tariff shown in the claimant's Exhibit No. 23-A, offered as claimant's Exhibit No. 24-A.)

Claimant's Exhibit 23-A shows, on page 332, rates applicable between all stations in the State of Florida on pine stumps, roots, tops and lightwood knots, carload, (for retort purposes,) when the distilled product is shipped out over the Atlantic Coast Line Railroad, per car 60,000 pounds, of $7.20 per car for distances nine miles and under and other rates variable with distances up to and including a distance of 249 miles at the rate of $22.50 per car.

The rate under the A. C. L. scale for a distance of 120 and over 110 miles is $17.00 per car of 60,000 pounds, while the rate for a like distance under the Cummer scale was $19.20 and under the I. C. C. scale $39.00. Yes, between 110 and 120 miles this rate per pound was lower than the Cummer scale. That tariff is not in effect today. It was omitted from the Southeastern tariff 6-B, which cancelled Southeastern Tariff 5-B, effective December 20, 1927.

[fol. 1866] Recross examination.

By Mr. Alston:

This I. C. C. scale shown on the exhibit is the intrastate scale in Florida fixed by the Interstate Commerce Commission and applicable during the period involved.

Q. Isn't there a difference on rates on pine stumps and knots and etc., as compared with the rates on logs? Isn't the rates on pine stumps and etc., lower than the rates on logs? Isn't that true? Isn't that customary?

A. I don't know what the custom is but some rates are higher than the rates effective at the same time on logs, and some of them are less—really Exhibit 24-A answers your question, anyway.

Redirect examination.

By Mr. Ashby:

(Title page and pages 26, 28 and 29 of Seaboard Air Line Railway Company's log Tariff 6, I. C. C. No. A-7306, certified by the Interstate Commerce Commission, offered as claimant's Exhibit No. 25-A. An analysis of the tariffs shown in Claimant's Exhibit 25-A offered as Claimant's Exhibit No. 26-A.)

Claimant's Exhibit No. 25-A shows on page 26 rates on logs, rough, viz: dogwood, gum, hickory, Persimmon and poplar, carload, minimum weight 40,000 pounds to Cheraw, South Carolina, from stations on the Seaboard Air Line Railway Company in North Carolina, the rates being in cents per car 40,000 pounds, with no provision being made for charging proportionally any excess over the minimum weight, therefore those rates apply per car, regardless of any weight in excess of the minimum weight of 40,000 pounds. Roughly speaking, the rates of the Seaboard Air Line Company from North Carolina points indicated here, to Cheraw, South Carolina, are approximately the same as the Cummer scale for a car weighing 60,000 pounds, but [fol. 1867] are lower than the Cummer scale for a car weighing 70,000 pounds. The same thing is true of a car weighing 80,000 pounds.

There are about 50 points of origin all in North Carolina on this tariff. (Tes. p. 210B.)

Page 26 of the same tariff likewise shows a rate of $14.50 per car regardless of weight on logs, carload, to St. Marys, Georgia, from Colesburg and Seals, Georgia, via Seaboard Air Line Railroad, Kingsland, Georgia, and St. Marys Railroad. These rates are $14.50 per car, regardless of weight, compared with the Cummer scale rate of $10.26 for a car weighing 60,000 pounds; $11.97 for a 70,000 pound

car and $13.68 for a car weighing 80,000 pounds. In other words, a car weighing 80,000 pounds under the Cummer scale and this scale would be about the same. If the car was heavily loaded, naturally the charge would be less under the Cummer scale than the rate of $14.50 under the Seaboard scale.

The same page likewise shows a rate in cents per thousand feet of $2.50 from Aucilla, Florida, to Tallahassee, Florida, on logs, except Cedar logs, carload minimum 5,000 feet, to be milled, and the product reshipped by the Seaboard Air Line Railroad, and a rate subject to the same description from Madison, Florida, to Tallahassee, Florida, of $3.50 per thousand feet.

The circle 38 reference does not affect the rates shown other than to authorize their application from intermediate point of origin and destination. The rate from Aucilla, Florida, to Tallahassee, Florida, for a distance of 35 miles is $12.50 per car of 60,000 pounds, using twelve pounds to the foot of logs. The rate for a like distance under the [fol. 1868] Cummer scale would be $10.26 and under the I. C. C. scale $24.00. The rate from Madison, Florida, to Tallahassee, Florida, a distance of 56 miles, would be $17.50. Under the Cummer scale for a like distance of 56 miles it would be $12.60 per car of 60,000 pounds. Under the I. C. C. scale it would be $30.00. Pages 28 and 29 of the same tariff likewise show a rate to Franklin, Virginia, of one and a half cents per hundred pounds on logs, carload minimum weight 49,000 pounds, viz., logs, pine, sawed, in straight carloads or in cars mixed with not over 20% of cypress, hickory, gum, oak or poplar logs, logs measuring not less than ten feet and not more than seventeen feet in length, from Weldon, North Carolina, Gumberry, North Carolina, and stations on the Seaboard Air Line Railway between Portsmouth and Raleigh, and on logs, pine, sawed not under twelve feet and not over twenty feet in length, in straight carloads and with cars mixed with not over twenty percent of cypress, hickory, gum, oak and poplar logs, from Gumberry and Thelma, North Carolina. That scale is published from particular points in North Carolina to Franklin, Virginia. The furtherest distance from which that rate is applicable is from Thelma, North Carolina, to Franklin, Virginia, a distance of 54 miles. The rate per car of 49,000 pounds under the scale just referred to would be $7.50 for a 54 mile haul. The Cummer scale rate on the

same distance for a 50,000 pounds car is $10.50. The Interstate Commerce Commission rate intrastate in Florida for the same distance on the same weight car of 50,000 pounds would be $22.50. The scale published in this tariff is $7.50, which makes the I. C. C. scale approximately three [fol. 1869] times as high as the rate published in this tariff. The rates per car of 40,000 pounds to Cheraw, South Carolina, have been changed to read, "per car 40,000 pounds, excess in proportion." That change was made effective April 8th, 1931. Prior to April 8, 1931, it read as stated in my exhibit. The rates to St. Marys, Georgia, which I referred to in this exhibit are still in effect today. The rates to Tallahassee, Florida, to Aucilla, Florida, and to Madison, Florida, which I referred to in my exhibit are in effect today. The rates which I mentioned to Franklin, Virginia, are in effect today.

Recross examination.

By Mr. Alston:

Q. Have you any other reason for saying that those rates to Cheraw, South Carolina, shown in Exhibit 26-A, apply in carloads, per carload rates, without regard to quantity except they were stated to be in carload minimum of 40,000 pounds and left off the words excess in proportion?

A. I have got the tariff here. It speaks for itself and the rates are shown on certain pages of Exhibit 26-A.

It only states minimum weight of 40,000 pounds but if you were to load a 40,000 pound car to 80,000 pounds capacity, it would be the same charge as for 40,000 pounds. That is the Interstate Commerce Commission's conclusion, not mine. I don't think I can give you the citation off hand. I don't have first hand information whether or not the rate to Cheraw, South Carolina, in my Exhibit 26-A, was collected on the actual weight or by the carload. (P. 215B of tes.) I can't remember the exact date when the ruling which I referred to was made by the Interstate Commerce Commission but it was perhaps two or three years prior to April 8, 1931. I am not familiar with a case against the [fol. 1870] Seaboard Air Line in the Supreme Court of Georgia concerning the construction of such a tariff as I described. I don't deny that the Seaboard Air Line contends that that tariff applies to excess in proportion but

the Interstate Commerce Commission ruled otherwise. The Seaboard did not change their tariff immediately following that decision because it was many months, or two or three years prior to April 8th, 1931, when that decision was rendered.

Redirect examination.

By Mr. Ashby:

A copy of Atlantic Coast Line Railroad Company tariff I. C. C. No. B-2183, effective May 1, 1923, duly certified by the Interstate Commerce Commission and also Supplement No. 1 thereof, as well as extracts from Supplement No. 39 to Atlantic Coast Line Railroad Company's Southeastern Tariff No. 5-B, I. C. C. No. B-2255, offered as Claimant's Exhibit No. 27-A. An analysis of the tariff shown on claimant's exhibit 27-A offered as claimant's exhibit 28-A.

Claimant's exhibit 27-A publishes rates from 231 points of origin to 21 points of destination. The rates so published can be summarized in a scale which is set forth in Exhibit 28-A and which is compared with the Cummer scale and I. C. C. scale using a basis of twelve pounds to the foot of logs. That covers distances up to 160 miles. The second page of Exhibit 28A purports to show certain exceptions to that scale. Those are point to point rates shown in the Atlantic Coast Line Tariff which do not conform to the [fol. 1871] mileage scale shown in Sheet 1 of 28A. The rate published under this tariff from Interlachen to Alachua, Florida, is $2.11, for a distance of 47 miles. That is somewhat less than the Cummer scale, it being $2.52 per thousand feet for a like distance. Under the I. C. C. scale the rate would be $5.40. From Newberry to Ocala it is $2.11 for a distance of 63.6 miles. I might add that the general mileage scale for rates in this tariff for that distance under the scale as shown in Sheet 1 of the exhibit would be $3.87, but there is quite a difference in that point to point rate. In other words, this scale between the various points in Florida had an exception in favor of particular points. The distance from Newberry to Ocala, Florida, is 63.6 miles. The rate in cents per thousand feet in the tariff which is in evidence as claimant's exhibit 27A would be $2.11. Under the Cummer scale it would be $2.76. Under the I. C. C. scale intrastate, it would be $6.00 per thousand feet in Florida.

The distance between Astor Park and Gainesville, which is shown on the second sheet of 28A is 111.4 miles. The rates published in the Atlantic Coast Line I. C. C. B2183, from Astor Park to Gainesville, was $5.24. Under the Cummer scale for a like distance it would have been $3.84. The rate under the I. C. C. scale in Florida would be $7.80. This tariff, claimant's Exhibit 27A was a local rate. It was published as a local rate, although the tariff provided that the milled product is to be shipped out over the Atlantic Coast Line.

There was no provision for an inspection or giving of a bond.

[fol. 1872] Objection by Mr. Alston,

The tariff provides that the milled product of the logs is to be shipped out over the Atlantic Coast Line, but it is not a transit tariff. The outbound product is to be shipped out over the Atlantic Coast Line but that is as far as the transit arrangement goes. It is merely an obligation or promise to ship the milled product over the Atlantic Coast Line Railroad.

Q. Now, what is the explanation of the difference between the rates as to specific points and the rates generally prescribed. Why is that?

A. I don't see why the point to point rates are published. They are different from the rates generally prescribed. I don't know that I could say what the explanation of that is. Sometimes there may be a specific or lower rate than the general mileage scale from point to point to meet cross country competition with another sawmill in that territory. (P. 220B of tes.) It may be that the competition involved may tend to depress the rates from point to point by the rates prescribed throughout the State.

Re-cross examination.

By Mr. Adair:

It is true that the point to point rates are usually made to manufacturing centers and the heavy volume of business may have something to do with the point to point rates. Where you have point to point rates there is bound to be movement. The reason they are generally lower is because

they are to manufacturing points and the volume of traffic is heavy.

[fol. 1873] By Mr. Ashby:

This rate is not in effect at the present time. It was discontinued in 1926. The supplement attached to Exhibit 97-A shows when it was discontinued.

By Mr. Alston:

Those rates were not in effect at any time during the period beginning January 1929 and ending April 1931.

Frank R. Patterson, being sworn for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is Frank R. Patterson and I live at Perry, Florida. I am auditor and assistant treasurer of the Burton-Swarts Cypress Company of Florida.

A copy of articles of agreement made July 24th, 1914 by the Atlantic Coast Line Railroad Company and the Burton-Swarts Cypress Company of Florida, purporting to be a trackage agreement authorizing the operation of log trains over the Atlantic Coast Line from a point called Hines, Florida to Perry, Florida and from intermediate points between Hines and Perry was offered as claimant's Exhibit No. 29-A.

I have been employed by the Burton-Swarts Cypress Company since July 10th, 1920. The trackage agreement between that company and the Atlantic Coast Line Railroad for the operation of logs over its line is still in effect. In 1930 and during the period immediately prior thereto, [fol. 1874] the Burton-Swarts Company operated trains over the Atlantic Coast Line Railroad on the Perry & Wilcox track under that agreement.

I have made a tabulation of that operation from September 24th, 1928 to January 29th, 1930, from Carbur, Florida,

to Perry, Florida, a distance of 17 miles. The first column of this tabulation is headed "Cars Hauled." By that I mean the number of cars we moved on load movements from Carbur to Perry, Florida. The second column is the number of feet hauled on those trains. The next column is the amount paid the Atlantic Coast Line Railroad Company for hauling the cars over their track for the distance of 17.58 miles

Q. I observe on there that it is $.078 per mile. That is more than the amount the contract calls for. Do you know how that increase came about?

A. On June 22, 1918, we had a letter from the Regional Director of Railroads increasing it 25%. There was another increase later on but I didn't have it.

The next column is the cost of operating and maintaining the train locomotive and train crew. At the bottom of this statement are shown the details of how we got at it. Those details are train crew labor, $8,725.40 and the Atlantic Coast Line for their conductor was $2,618.21, and the coal used by the locomotive was $8,140.50, supplies for the locomotive $769.70, and the maintenance labor $890.42, making a total of $21,144.40. The next column is the log car main- [fol. 1875] tenance account. That represents running repairs. That includes all repairs of every kind.

Q. I observe on the first item, $4,629.04, and the item of $3,571.01. That is the car log maintenance from September 1924 to September 30th, 1928 and October 1928. How do you account for those figures being higher than anything else in the succeeding items of that column?

A. We have 102 log cars and 62 of them are steel cars and 40 are wood cars. We have been shut down since May, 1927, about 16 months and the wooden cars had deteriorated. In September we rebuilt the wooden cars at a cost of $2,281.18, and the supplies were $1,094.33 and shop work labor was $1,248.12. Those expenses go for reconditioning and rebuilding, as well as running repairs and there was $6.40 for miscellaneous items.

The next column to the right shows depreciation of the locomotive and log cars. We did not depreciate on individual items. The method we followed was what we worked out with the Treasury Department in order to get as much as possible. We have the equipment divided. We

have log equipment, saw mill equipment and miscellaneous equipment and cost. The basis of depreciation that the Government allowed us is based on the economical labor determined by the average annual production under the available timber supply that (1,225.11 of tes.) fluctuated from year to year. I took the total logging equipment of $373,497.09 and compared the depreciation reserve, that amounted to $250,547.33 and that figured out to be 66.49% [fol. 1876] of the total cost of logging equipment. That was what the depreciation reserve amounted to from the time we started in 1914 to 1930. Then I took the log train locomotive which cost $10,637.28, and added to that the log car cost of $74,665.38, making a total of $85,302.66. I then took the depreciation of 66.49% and applied that to it equaling $59,276.81, and divided it by the total production up to that time of 579,123,651 feet and that gave $.1024 cost per thousand feet and to make the statement consistent I applied the cost per thousand to the feet hauled each month. In a way it did look like that wasn't a sufficient reserve but we maintained equipment and got our equipment charged off to such an extent that we wished we had more on our books to charge off in the future. We worked it out when taxes were high. We tried to work out as high depreciation as they would let us. The last column is a total of all columns. This statement shows the total cost of haul under that trackage agreement per thousand feet over the whole period to be $1.5009. These particular logs came from timber on the Clara main line or East main line, one of our spur tracks, northeast of Carbur, Florida, and it moved about the same distance in the woods as over the Atlantic Coast Line. Our locomotive would bring them in from the woods and put them on the main line and the Atlantic Coast Line locomotive would take them on. The train would already be made up and we would pull it on the tracks of the Atlantic Coast Line. We did not try to segregate the log car maintenance.

[fol. 1877] That log car maintenance means the total maintenance of log cars during that period. Our average haul in the woods on our own line was approximately equal to the haul over the Atlantic Coast Line Railway. That item of the log train operation and maintenance, with a total of $21,144.23, only covers the operation over the Atlantic Coast Line from Carbur to Perry, Florida. We

segregated that. This was the cost of running the logs from Carbur to Perry. Those are the actual figures—just what the expenses were.

We have employment insurance and liability cost of $146.30 for this period, which would be a proper charge to this operation in order to determine the aggregate cost of transporting the logs under the trackage agreement with the Atlantic Coast Line Railroad for this 17.58 miles. No insurance on the equipment was taken into consideration. The initial cost of this locomotive and log cars was $85,302.00. We are carrying it on our books at that, less depreciation, it nets down to $27,000.00.

The statement about which the witness testified was introduced as plaintiff's exhibit No. 30-A.

Cross-examination.

By Mr. Alston:

This contract was entered into on the 24th of July, 1914, I believe. It is right that under this contract the lumber [fol. 1878] company agreed to ship the entire manufactured products cut from said logs over the lines of the Railroad Company and its connections to destination, provided the rates offered by the Railroad Company were as low as the lowest lawful rates in effect over other lines between said points of origin and destination and provided the service was equal. It lived up to that as far as possible but we had some logs not adjacent to the Atlantic Coast Line that we had to bring in over the L. O., P. & G. Railroad. The Railroad Company granted the lumber company the right to run and operate its own engines and logging cars or flats over and upon the tracks of the railroad company during the period of this contract. That part of the track which the contract covered and which we were to operate over was from Hines to Perry, Florida, and all and my intermediate points. What the railroad furnished then was the right of our company to haul logs over its tracks between Carbur and Perry and furnished a conductor and we paid for it. The lumber company was to furnish its own engines and cars and the expenses of the engines and cars, such as fuel and supplies and all other necessary material for the operation or for operating their cars over the tracks of the Atlantic Coast Line, and the

lumber company was to maintain those engines and cars in a condition satisfactory to the railroad (P. 230-B of tes.), and they were to see that engine and cars were inspected according to Federal requirements. The lumber company was to furnish all expenses to employ and furnish [fol. 1879] the necessary enginemen, trainmen, brakemen, firemen and all necessary hands or employees for the proper operation of said trains over the tracks of the railroad company. The lumber company was to haul logs and no other class of freight. They were to transport no passengers. We were permitted to haul sawdust and sawmill waste. There wasn't any charge for that.

According to the contract, the charge for trackage rights was one dollar per mile per train for 20 cars or less, but on June 22, 1918, there was an increase of 25% and later on there was an increase again. Trains of less than 20 cars were to be charged for at the same rate as for 20 cars. Trains of more than 20 cars would be charged for in proportion, to-wit, five cents additional for each additional car per mile. There was to be a minimum charge of ten dollars per train for 20 cars or less.

Our company executed a bond in the sum of $10,000, conditioned to idemnify and save harmless the Railroad company from any loss, costs, injury or damage of any and every character that might be sustained or incurred by the Railroad Company by reason of the trackage privilege given to the lumber company under the terms of the contract. The Railroad company agreed to furnish all necessary switches, rails, spikes, fastenings and other materials necessary for the construction of such side track or tracks as should be needed at the plant of the lumber company at Perry, Florida.

In the building of any new side tracks the lumber company agreed to furnish the cross ties and to do the necessary [fol. 1880] grading for said side track or tracks of the Railroad Company and the Railroad Company agreed thereafter to construct the said side track or tracks and to maintain the same and the Railroad Company had the right to use that side track.

The railroad's part of this contract was to grant us the right to move our trains over that track at a cost of one dollar per mile per train of not more than 20 cars, and there was an increase of 25%, and later on there was an increase again of 25%. There was no increase after the

second time. The first increase was made by the Regional Director of Railroads but I didn't locate the last one to see about it. The first increase was made June 22, 1918, but I don't know just when the second one was made. I made my statement on a basis of $.078 per car per mile. That was the actual amount paid the Atlantic Coast Line Railroad. The way I understood it, that was the amount applicable between Hines and Perry and all intermediate points. In ascertaining this cost you take into account none of the cost of the railroad, you simply take into account what our company had paid the railroad company plus the cost of operating and maintaining that log train. I have those columns. One, log train operation and maintenance and the other, log car maintenance. One is log train operation and maintenance, that is pay for the train crew, labor and maintenance and operation of the locomotive and coal for the locomotive and the other one, log car maintenance, is the cost of upkeep and repairs on the log cars. The column headed "Depreciation of locomotive and log cars" is in addition to the maintenance. We have train [fol. 1881] crew labor, $6,725.40. That is from September 24, 1928, to January 29, 1930. The details of that account are as follows: There was an engineer that got about seven dollars a day and our conductor got four dollars a day and the fireman got about $3.50 per day and the brakeman got about $3.00 per day. I believe those were the only employees. They got paid on a basis of eight hours or ten hours, whichever it was. Sometimes they made a round trip in three or four hours.

We did not have men employed to do section hand work to keep up the tracks on the Atlantic Coast Line. Those figures of coal, $8140.50, that was charged as it was issued at six dollars per ton. Going back to the conductor's expenses of $2,618.21, that four dollars I mentioned was the Atlantic Coast Line's. He gets on the train as we go on the Atlantic Coast Line tracks. I don't remember what his pay was but the amount I have here is what we were invoiced by the Atlantic Coast Line. This item of supplies of $769.70, is made up of locomotive supplies, whatever was necessary for the locomotive to keep it in shape.

That item is nothing but supplies for locomotive and for caboose, if necessary. I didn't separate that. Maintenance labor is charges for work done in the shops on the locomotive running repairs. It has nothing to do with the

cars. The shop work on cars would go to log car maintenance.

This item of log car timbers, $5189.89, represents timber used in rebuilding 40 wooden cars that needed repairs. That was for rebuilding those cars which were put in good condition on September 24, 1928. Under that I have an [fol. 1882] item of supplies of $7,079.86. When those cars were rebuilt we had to have bolts and nuts and other material amounting to $2000.00 and the other was maintenance supplies for the cars, whatever it might be. The car wheels were included too. This was during the period from September 24, 1928, to January 29th, 1930.

The item, "Shop Work Maintenance, Labor," of $13,319.58, was for timber used on the wooden cars, putting in new wheels and things. This item "Other Labor," $76.33, was for a smaller amount of labor that was not included in there. I have maintenance labor and other labor aggregating $25,665.66. That is, aggregating the column headed Log Car Maintenance. About $7,500 of that money was spent in putting cars in order about September 24, 1928 and for service beginning at that time through January 1928, when we finished that work. The balance of this item is made up of ordinary running repairs. 102 cars in all were used. 62 were steel cars and 40 wooden cars. On the left hand side of Exhibit 30A, under the head "Average Cost per M Feet," I have a item total logging equipment $373,497.09. That item included something other than cars. It is to show how I arrived at the depreciation. That does include cars but the cars are down below. I have depreciation reserve to December 31, 1930. That item represents the depreciation reserve which the Federal income tax department permit us to set up against the item which I call logging equipment.

The item of $259,547.33 is 69.49% of the entire sum which I call logging equipment, to-wit: $373,497.09. I depreciated [fol. 1883] the cars by that percentage. You then take the cost of the locomotive $10,637.28 and the cost of log cars, $85,302.66 and you then take 69.49% of that, which gave you $59,276.81 as depreciation. That is included in next to the last column. This 69.49% covers the entire period of operation to December, 1930, from January, 1915, sixteen years. Then I have taken this period from September 24, 1928, to January 24, 1930, which is about 18 months.

On a pro rata basis for maintenance I took the entire period and divided and it figured out $.1024 per thousand. I applied it to this production for that period, on the amount we had that we produced from those logs. Our production was based on logs reduced to board measurements. We did that on a basis of lumber. The logs were figured on the log scale—not on weight. We take our depreciation on the basis of manufactured lumber. The rate of depreciation that we used on the locomotive and on the cars was not over five percent per annum. I have not separated that from the locomotive and cars to show how much we applied to cars and how much we applied to the locomotives. Our labor in maintaining the locomotives and cars cost us about five dollars per day probably (P. 240-B of tes.). That was for labor. Supplies amounted to $769.70 for this sixteen month period. That is operative and maintenance supplies. We did not make a segregation of that at all.

Q. What did you pay for labor used in maintaining the cars?

[fol. 1884] A. Well, some of the mechanics got seven dollars per day and some six per day and some five and some two dollars and some three dollars per day. Whatever his time was worth is what we charged. We charged about ten percent overhead to take care of shop foreman and shop overhead.

Two-thirds of this labor used was above two dollars per day. That two-thirds averaged to the workman six or six dollars and a half a day. None of our employees are Union men. We were not under regulations applicable to railroad labor. We had four or five mechanics who worked on the locomotive from time to time. In the carpenter crew we had three or four who worked on the cars from time to time. They turned in time sheets for whatever work they did every day. I have supplies, $7,079.86, which is engine supplies and log cars. That would include brackets and wheels. I don't remember the details that constituted those supplies and the rates we paid or what the items cost. I don't remember what the brackets cost. I haven't any of those prices in mind. Those items of cost and expenses do not include taxes for state and county, office supplies, stenographic, insurance on the property, premiums on the bond, office rent or office salaries.

Redirect examination.

By Mr. Adair:

A car which scaled five thousand feet of logs would average about four thousand feet of lumber cut out of it.

Recross-examination.

By Mr. Alston:

Under my second column headed "feet hauled" that was manufactured lumber hauled, that is, the feet the logs scaled reduced to actual feet of lumber we got out of it. This does not show the number of feet of logs hauled but that figures twelve or fifteen percent more than that.

Redirect examination.

By Mr. Adair:

Our whole cost of $1.5999 is cost per thousand feet of lumber cut from the logs.

[fol. 1885] Recross-examination.

By Mr. Alston:

The feet of logs would scale about one-eighth more than the feet of lumber so this cost to be applied to logs should be reduced about one-eighth. We tabulated the log scale from this tract and pro rated it down to the actual production, which figured twelve percent less than that in feet of lumber than the feet of logs.

Redirect examination.

By Mr. Adair:

Our cars usually have about four thousand feet of logs on them and we get about 3500 feet of lumber. About 12½% less of lumber than the transported logs. This distribution of $1.5999 per thousand feet cost is reduced to terms of lumber feet whether you apply it against the logs or lumber, it would make no difference in the amounts as distributed here. We generally hauled forty cars to the train. At that time we were always above our minimum.

They were running about twenty-five or thirty cars to the train at that time.

Recross examination.

By Mr. Alston:

We have not made use of this contract since the 29th of January, 1930. It has been inactive. From January 29th, 1930, until July, Brooks-Scanlon was doing our logging under our contract and was so situated that it did not come in over our tracks and we have not had an occasion to use it. We operated our train when we were using the train six days out of the week, 25 or 26 days a month. The figures relate to the round trip. The train would carry the empties down and bring a load up. From Perry to Carbur, Florida, is down.

E. C. Green, sworn for the claimants, testified as follows:

Direct examination.

By Mr. Ashby:

My name is E. C. Green. I reside in Jacksonville, Florida. I am Manager of the Jacksonville Traffic Bureau. I have made an investigation of the traffic in connection with this proceeding.

Copies of certain tariffs certified by the Interstate Commerce Commission offered in evidence as claimant's Exhibit 31-A. An analysis of the tariff shown in exhibit 31-A was offered in evidence as claimant's Exhibit 32-A.

[fol. 1886] When I refer to the I. C. C. scale in connection with this exhibit I have reference to the scale fixed by the Interstate Commerce Commission, intrastate in Florida. That is the rate set aside by the former order of the Supreme Court in this case.

I made a check of each of the tariffs shown in claimant's Exhibit 31-A and the later re-issues of the tariffs and the rates pointed out in this exhibit are still in effect today.

A copy certified by the Interstate Commerce Commission of the Mississippi Central Railroad tariff I. C. C. No. 555

and Supplements 1, 2 and 3 to that tariff were offered as claimant's Exhibit 33A. An analysis of the tariff shown in claimant' Exhibit No. 33-A was offered as Claimant's exhibit 34-A.

Claimant's exhibit 33-A shows the entire Mississippi Central Railroad tariff I. C. C. No. 555; effective April 15, 1925, as well as supplements No. 1, 2 and 3 to that tariff. (P. 2538 of the testimony.)

That tariff was a scale of rates on pine logs for all distances up to 75 miles of 2.5 cents per 100 pounds and the I. C. C. scale is 5.5 cents per 100 pounds for 75 miles. The supplements show that this tariff was suspended while the Interstate Commerce Commision investigated the rate so published, until August 2, 1925, at which time that Commission vacated its suspension order and permitted the rates so published to become effective. Those rates are in effect today. That particular tariff is not in effect but the rate is in effect from the other tariff that has been re-issued.

A copy certified by the Interstate Commerce Commission of the title page and page 4 of the Seaboard Air Line Rail-[fol. 1887] road Company tariff I. C. C. No. A-7656, was offered in evidence as claimant's Exhibit 35-A. An analysis of the tariff shown in claimant's Exhibit 35-A was offered in evidence as claimant's Exhibit 36-A.

A copy certified by the Interstate Commerce Commission of title page and pages 5 and 7 of Bennettsville & Cheraw Railroad Company tariff I. C. C. No. A-48, local freight tariff, was offered in evidence as claimant's Exhibit 37-A. An analysis of the tariff shown in claimant's exhibit 37-A was offered in evidence as claimant's exhibit 38-A.

Copy of the entire Gulf, Mobile & Northern Railroad Company tariff I. C. C. No. 1128, certified by the Interstate Commerce Commission was offered in evidence as claimant's Exhibit No. 39-A. An analysis of the tariff shown in claimant's exhibit 39-A was offered in evidence as claimant's exhibit 40-A.

The tariff so shown is still in effect.

A copy of the Tremont & Gulf Railroad Company, local tariff I. C. C. No. 133, certified by the Interstate Commerce Commission was offered in evidence as claimant's Exhibit 41-A. An analysis of the tariff shown in claimant's exhibit

No. 41-A was offered in evidence as claimant's Exhibit 42-A.

Q. I observe that some of the tariffs which you have discussed provide a scale of rates applicable as distance scales and the other tariff provides point to point rates. Can you tell me why the point to point rates are made?

A. My understanding is that the carrier generally publishes point to point rates in order to take care of the volume movement of tonnage whether it be logs or some other commodity. They generally publish a scale applicable over the entire line to take care of spasmodic movements. It is my observation that point to point rates are generally [fol. 1888] lower than the scale rates. They are established for specific reasons and they generally move a larger volume of traffic than the scale rates do.

Cross-examination.

By Mr. Alston:

I do not know of any circumstance under which the Central of Georgia Railroad Company's tariff referred to in exhibit 32-A was put into effect. Tariff No. 2772, which shows a rate from Dawson, Georgia to Union Springs, Alabama, is not a transit tariff, but is for specific logs to be used in manufacturing and reshipment over the lines of the Central of Georgia. As to other rates, I don't see anything in the tariff of a transit nature. My recollection is that there is no provision in connection with particular items published in rates from Sandersville, Georgia, to Macon, Georgia, connecting it up with transit rates or reshipment. I have the tariff before me. On page 43 is a rate of $18.50 per car of 40,000 pounds from Union Springs, Alabama, to Dawson, Georgia (P. 260B of tes.), which says, "logs, short length, blocks and rough timber, round or split, to be used in manufacture and product re-shipped, will not apply on poles or piling per car of 40,000 pounds or less, excess over 40,000 pounds to be charged for in proportion." That is the language of it. That includes long or short logs. I don't know how the Central of Georgia construes that. The same tariff shows on page 117 a rate on logs from Sandersville, Georgia, to Macon, Georgia, a distance of 60 miles of $14.50 per car of 40,000 pounds, excess

in proportion. The rate from Samson, Alabama, to Macon, [fol. 1889] Georgia, applies to logs, short length blocks and rough timber, round or split, to be used in manufacture and re-shipped. This rate will not apply on poles or piling, straight or mixed and does not apply in excess of marked capacity. It mentions regardless of weight but not over capacity of the car. The rates from Slocum to Macon and the rates from Sellersville to Macon, are regardless of weight. I do not know any condition or circumstances under which those rates were issued. There is no transit arrangement coupled with the G. M. & N. Railroad Company I. C. C. tariff. There is a bond requirement which requires the manufactured products to be re-shipped over the G. M. & N. Railroad. That is not a transit arrangement. The bond was given to insure that the manufactured product would be re-shipped over that railroad and in the event that the manufactured product is not re-shipped over the G. M. & N. Railroad, they will pay to the railroad not the net rates on the logs but the full local rates into Mobile. That is not a transit arrangement. What I mean by a transit arrangement is one that has police regulation. The Graham County Railroad Company's scale rates on logs in cents per car, regardless of weight does not have reference to a transit arrangement. The way it is published, it is so much on logs of all kinds, in cents per car, regardless of weight, without reference to minimum or maximum weight. I don't know how the Illinois Central Railroad Company tariff, I. C. C. No. 7423, effective March 12, 1929, originated, but I know that rate has been in effect since 1925, and is still in effect. I contend that the Cummer scale was reasonable under the conditions under which it was applied. The purpose of my testimony is to show as far as I can that the [fol. 1890] rates of other railroads do and did bear some reasonable relationship to the Cummer scale. I am using the Cummer Scale and also the I. C. C. scale as a yardstick to measure those rates.

The tariff of the Kentucky-Tennessee Railroad Company I. C. C. 106, effective August 22, 1930, does not have reference to any transit arrangement. I do not find any transit condition or re-shipping arrangement in the tariff of the Laurinburg and Southern Railroad Company, I. C. C. No. 18, effective intrastate April 11, 1931, and interstate May 1, 1931. It is a straight out local rate applicable at the time

the logs were moved and has been in effect since July 1, 1932. The New Orleans and Northeastern Railroad Company tariff I. C. C. No. 3104, effective September 21, 1932, shows a rate on logs, carload, from New Orleans, Louisiana, to Laurel, Mississippi, a distance of 146 miles of 2½ cents per one hundred pounds and that rate is applicable for manufacture and re-shipment over the same railroad. That was on long haul junctions.

I referred to a tariff of the Norfolk-Southern Railroad Company I. C. C. No. A-846. That road is in the hands of a Receiver. I don't know what water competition that road has faced. That tariff does not have any reference to re-shipment.

Tariff No. A-762, does propose rates which are under a transit arrangement. There are no transit conditions and no reshipment conditions in the Tennessee-Alabama and Georgia Railway Company tariff I. C. C. No. 225. This is [fol. 1891] just a straight out local rate. There is no re-shipping arrangement in the tariff of the Atlantic & Western Railroad Company, I. C. C. No. 29, covering a one mile haul. That tariff has been effective since 1920. If there is a switching arrangement it would be published in the switching tariff, not under log rate. (P. 265B of tes.) Yes, I think it is an unusual rate. I do not know anything about the origin of the Bonhommi & Hattiesburg Southern Railroad Company tariff I. C. C. No. 4, effective March 14, 1925, showing a rate of $12.50 per car regardless of weight for a 27 mile haul. The Birmingham and Southern Railroad Company tariff I. C. C. No. 8, effective January 30, 1930, publishing a rate on hardwood billets from various points, including Eclectic, Alabama, to Union Springs, Alabama, of $24.00 per car of 60,000 pounds, excess in proportion. There are no transit arrangements or re-shipment provision in that tariff and the tariff does not say that it is published to meet motor truck competition because it has been in effect since 1925. I do not know whether this road is in the hands of a receiver.

By the Court:

This last tariff is still in force. The Tremont & Gulf Railroad Company tariff I. C. C. No. 133, effective June 8, 1927 was later reissued on October 1, 1931, in another tariff

in which the same rates applied. There are transit conditions there. There is no change in that and the other in that respect.

Q. The different tariffs that you have testified about, do you know what period that covered?

A. Some were established in 1925 and the same rates are in effect today.

[fol. 1892] Q. Do you know whether or not they covered the period in question, or remote, or proximity to that period?

A. I can say they were in effect at the time of this period we are discussing.

Q. Well, it is possible that some might have been and some might not have been.

Mr. Ashby: We can go through and see.

Court: Suppose you do that and save time and bring him back in the morning; that will be best and we will save time by it.

Mr. Adair: He can bring a list in the morning and add it to the respective exhibits.

Mr. M. L. Fleishel, sworn for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

I am President of the Putnam Lumber Company and vote in Jacksonville. I reside in Shamrock, Florida, which is fifty miles from Perry. Perry is west and north of Shamrock, Florida. I have been engaged in the lumber business for forty years. I have been engaged in the lumber business in Florida for 20 years. I have been connected with the Putnam Lumber Company since the first of 1919, when it began operation. It is now located in Dixie County, having been erected there in 1927 and 1928. [fol. 1893] We have a pine mill that has put out about 670 million feet, about ten million feet per month. Before this mill was constructed in 1927 we operated the Cummer Mill at Milldale. That is on the outskirts of Jacksonville, north of the town. That was a double band mill with a capacity

of about 36 million feet per year. We were there between seven and eight years, from January 1, 1919, until the fall of 1927.

Prior to that time I was operating the Brooks-Scanlon plant at Eastport, which was later operated by Foley. It was the Brooks-Scanlon plant at the time I operated it. I think it was built in 1914 and we started the Putnam the first of 1919.

At first, its capacity was about 36 million a year. We ran a double shift, which made about 70 million. Later on we built a smaller mill and increased its capacity to around 90 million a year.

We operated the old Cummer mill at Eastport, Florida for the Putnam Lumber Company in 1926. At that time we were operating another saw mill plant in the Western part of Jacksonville. That had a capacity of about 30 million a year. (P. 270B of tes.)

The Putnam Lumber Company owned about one billion and two hundred million feet of timber in Dixie and Lafayette Counties. We had a little in Glenwood County also. Ninety per cent of our timber was in Lafayette and Dixie Counties. We transported the logs to Jacksonville over the main line of the Atlantic Coast Line Railroad. The Cummer scale was in effect at that time.

[fol. 1894] The Putnam Lumber Company had negotiated with the Denkmann Lumber Company with respect to the sale of the Putnam Lumber Company, mill, timber and equipment.

Mr. Alston: I object to any trade. It is irrelevant and has no relationship to this case as to what a reasonable rate was during the period under investigation.

Mr. Adair: I think I will unquestionably satisfy your Honor that it has a bearing on what is a reasonable rate because I shall show by this witness that the timber and plant referred to was sold upon the theory that the prospective purchasers could or did believe that the Cummer scale was reasonable for the transportation of the logs or timber of the Putnam Lumber Company to its particular mill. I propose to show that as a result of this log litigation that the prospective purchasers refused to go on with the sale because they were not willing to take any chances of having to pay any more than the Cummer Scale upon the theory that the Cummer Scale was reasonable and that

anything or any rates substantially more than the Cummer Scale was an unreasonable rate. I realize that we are precluded from contending that the application of the Cummer scale is a complete measure of restitution in this case. We want to show what was a reasonable rate for each particular movement at the particular time here involved, and that as a result of this high rate the trade fell down.

(Mr. Fleishel continuing:)

The negotiations were for all of the company's assets except bills or accounts receivable. It included all of the timber around Perry, something over a billion feet of pine [fol. 1895] or cypress. The Denkmann people proposed to saw the pine and cypress at Milldale and Ortega, Florida. They had practically completed the purchase. The pine mill and the cypress mill was included in the transaction.

The negotiations proceeded almost day and night over a period of six or eight months. I would say they were 99% completed. The contract had been agreed upon, the language of the contract and everything relating to the contract. So far as the Putnam Lumber Company was concerned between ten and twelve million dollars was involved.

Q. What happened to the transaction?

Objection by Mr. Alston, that this calls for a conclusion.

The Court: I will let it go in and rule on it later.

A. They felt like and believed that the Cummer Scale then existing would not be in effect much longer. I attended a conference of the officials of the Atlantic Coast Line Railroad in which the Denkmann interests were present. I can't remember the date of that conference but I think it was in the summer of 1926. We had a conference with Delano, R. A. Brand, W. E. Cummer and Rimers, who was head of the Denkmann interest and D. W. Seabolt. As I remember we couldn't get any assurance from Delano and Davis that the Cummer scale would be continued. Rimers and his assistants would not sign the contract unless they could get the assurance that they would not have to pay a higher rate on logs than the then existing Cummer [fol. 1896] Scale. The trade was then indefinitely postponed until we could get better assurance, which we were not able to do.

The arrangement we had with Cummer was an indefinite lease of the property subject to a year's option on our part for renewal. The rate was $60,000 per year. Our investment in the plant at Ortega, Florida, was $250,000.00. When the trade blew up we moved to the woods. There is a difference in having the mill in the woods and having it some distance removed from the timber. Yes, we built the so-called Brooks-Scanlon Mill at Eastport.

When the contract between the Carpenter-O'Brien Company and the Atlantic Coast Line Company for the transporting of logs was entered into and at the time of the publishing of the so-called Cummer Scale, I was Vice-President and General Manager of the Carpenter-O'Brien Company. I had very much to do with negotiating that contract. That mill was built in 1913. We hauled our logs over the main line of the Atlantic Coast Line Railroad under the Cummer Scale. (P. 275B of tes.)

That continued from 1914 until the fall of 1927 when the rate was changed. Of course, there were advances all along. As long as I was with the Carpenter-O'Brien Company we operated under the Cummer Scale.

Q. Tell me, if you can, whether or not you considered the Cummer Scale during the period in which you operated to be reasonable or unreasonable. Did you consider it to [fol. 1897] be a reasonable rate or an unreasonable rate.

Objection by Mr. Alston.

A. I considered it a reasonable rate.

I would not consider a rate twice that high to be a reasonable rate. I do not consider any rate substantially in excess of the Cummer scale to be a reasonable rate for the transportation of logs in Florida for the operation of sawmills.

Before I came to Florida I was operating in West Louisiana about 20 miles from the Texas line. I operated there for eleven years. I was born and raised in Texas. I was in the lumber business in Texas, that is where I started. I am fairly familiar with the topography and transportation conditions generally in Texas. They are substantially similar to those existing in West Louisiana.

Q. Would you say the conditions in Texas were similar or dis-similar to Florida with reference to logs?

A. I would say that it was more simple in Florida for the reason that the country is flat and you can haul heavier

trains under lighter equipment. I couldn't say whether the movement of logs, the per mile movement in Florida was greater or less on the Atlantic Coast Line, greater or less on the carriers generally, during the ten year period preceding January, 1931, than in Texas. I was First Vice President of the Southern Pine Association for several years, up until about a month ago. I occupied that position for four years. That organization embraces the pine operation from Texas to Virginia. I have been on the Board [fol. 1898] of Directors since it was organized. In a general way that acquainted me with the lumber business in the South and Southeast.

When I was running the Carpenter-O'Brien business near Jacksonville, our logs were brought to the mill by train loads. In the case of the Putnam Lumber Company, they were brought by trainloads practically daily over a certain period of time. The same thing was true with respect to the Brooks-Scanlon Company.

Q. How many men did you employ in your Milldale plant when you closed it up?

Objection by Mr. Alston.

A. I imagine we had between three and four hundred men there and between 120 and 150 at Ortega, Florida.

Cross-examination.

By Mr. Alston:

I was examined in the proceeding before the Interstate Commerce Commission on two or three occasions.

Q. Do you remember giving evidence in January, 1927, substantially as follows, under questions from Mr. Adair: (Reading) "I want to know from you as an expert whether or not you believe that if any of these gentlemen on tidewater had this thing to do over again now, they would locate their mills on tidewater, or they would take their punishment and go to the woods? Answer: I think I can answer that best by telling you that I am moving mine to the woods now. Question: You are? Answer: Yes." Is that right?

A. Yes, sir.

Q. I will read you several of them: Question: (Reading) [fol. 1899] "Notwithstanding the loss that will accrue to you by virtue of the removal of your cypress mill? Answer:

it will cost us a million and a half dollars to do it. Question: To move to the woods? A. Yes. Q. Mr. Fleishel, can you tell me whether or not in your recollection over the last several years there have been any new mills built in Florida? A. Yes, sir; several of them. Q. Where have those mills been built? Can you name any of them? A. Yes. Q. I would be glad if you would? A. One built at Lake Wales, Florida, one at Nears; one at Sherman, Florida; another at Holopaw, Florida—all have mills. Q. Have those mills been built at tidewater, or at the timber? A. All built at the timber. There is no point in building at tidewater any more. Q. What, then, is the justification of maintaining these mills at tidewater? A. The tremendous investments they have got. Q. The tremendous investments they have got? A. Yes. Q. That of course to some extent—the loss in operations—is overcome by some advantage in the water rate, is it not? A. Oh, yes, that is the only excuse in the world, is your outbound water freight. Your outbound shipping weight of lumber is only forty percent of your inbound weight. Q. Is it not a fact, Mr. Fleishel, that the logging in Florida situation is moving, when it moves—the tidewater mill is moving in the general direction that the finished product will take when it is manufactured? A. It is. These mills that have been built in Florida in the last five years have every one been built interior, and built on the Atlantic Coast Line Railroad when they had the advantage of this Cummer scale, and still wouldn't use it. Q. Found [fol. 1900] it more economical to go to the woods? A. Sure; there is no question about that." Was that your testimony?

A. Yes, sir.

Q. Now I read you some questions by Mr. Perry: "Q. Now, you stated this morning that you were dismantling certain portions of your property and moving it, to the amount of about a million five hundred thousand dollars, and moving it from tidewater to the woods? A. Yes, sir. Q. Is that an economic desire? Does the economy of the thing appeal to you to cause you to do that? A. Certainly, no other reason whatever. One of these plants is only three years old and it has got fifteen years yet to run. Q. So then am I to assume that the so-called Cummer log rates in Florida are not of such a nature as to make them especially desirable where you have to draw your logs one hundred and twenty or thirty or forty miles? A. They are too high.

Q. And for that reason you are going to the woods? A. Yes." Is that your testimony?

A. Yes, sir, it was.

Q. Now on a hearing before the Interstate Commerce Commission in June, 1931, did you testify as follows: (Reading) "Q. Now, Mr. Fleishel, you testified at the former hearing in substance that you were going to move to the woods irrespective of the outcome of that then pending litigation in this proceeding, is not that correct? A. Yes. Q. Why did you reach that conclusion? A. Because we figured the rate was too high and we could not afford to do it. Q. What rate was too high? A. The log rates. Q. (By Exam. Hoy.) Is not that stated in the previous record the reasons why he was doing that? A. Yes. (Exam. Hoy:) There is no use to repeat it. (Mr. Adair: I am not sure whether it is or not developed, but what I want him to say, your Honor, is what rate was too high.) The Witness: The then existing log rates. Q. The Cummer scale? A. Yes." Is that your testimony?

[fol. 1901] A. Yes, sir.

Q. Do you know about the traffic on the Atlantic Coast Line Railroad, the density of the traffic in Texas?

A. That is too broad a question, I can't answer it.

Q. You testified about what you thought was a reasonable rate and what wasn't a reasonable rate?

A. I was trying to use it in the sense it might be compared with what it would cost, what the ultimate cost would be in handling the logs some other way by private railroad into the mill plant and then the outbound lumber rate on the finished product as compared with the heavier tonnage haul on which we paid freight that did not produce lumber. To answer that would require considerably more records, and then you——

Q. You remember your testimony that I have just read to you?

A. Yes, that would have to be treated as a whole.

Q. In considering what a reasonable rate to which you can command the service of the railroad, you consider the right of the railroad to earn a fair return upon its property invested?

A. Well I would say, in answer to that, that it depends on how you figure the investment.

Q. Yes, but you would figure the investment at a lawful method of ascertaining value, would you not?

A. Well the lumber or log movement is such a small percentage of the entire movement until I don't consider that I am qualified to say whether it bears or shares the burden, or whether it bears more than its share of the burden.

[fol. 1902] Q. Suppose the log movement on the Atlantic Coast Line Railroad was seven per cent all over Florida, suppose the revenue from that was about 2½ per cent, would that have any influence on you?

A. In attempting to say what I thought was a reasonable or unreasonable rate, I was taking into account a reasonable fair knowledge I had of what it cost to move logs from the point of origin to point of destination with the exception of a very few overhead items of expense entering into it, taking that into consideration all that, I figured that the Atlantic Coast Line Railroad did not have any more profitable business than hauling logs in trainload lots. Of course, I can't figure it definitely. I knew what it cost to keep up the cars because we paid it. I know how much coal they burned and how much revenue they got. I could figure it reasonably accurate as to what it cost and I knew what we paid them.

Q. Did you figure that the haulage cost and expenses was greater than the income?

A. I certainly did not, and I don't believe that any other fair accountant would.

Q. You are not an accountant yourself?

A. No, sir.

Q. You have not had access to the books of the railroad?

A. I knew the primary cost of that.

[fol. 1903] Redirect examination.

By Mr. Adair:

I gave the testimony which Mr. Alston read to me and my recollection is that I testified substantially as he read to me.

Q. Has your opinion changed that you couldn't transport logs that distance to Jacksonville even at the Cummer scale?

Objection by Mr. Alston.

A. Not unless I already had a plant built. I had talked several times with Atlantic Coast Line Railroad Officials

with respect to whether or not the Cummer scale and the traffic movement over the Atlantic Coast Line was a profitable or unprofitable business . I talked to everybody from Delano on down. I talked to Delano about it from 1925. I don't think they ever admitted it was profitable. I don't remember that they said it was unprofitable. I first heard that the Atlantic Coast Line Railroad was dissatisfied with the Cummer scale under which we had operated some ten or twelve years, in 1926, when this row came on before the Interstate Commerce Commission.

In our case this Cummer scale was on trainload movements, except isolated cases where we would put a few logs on a regular train, which was very seldom. (P. 285B of tes.)

C. H. LLOYD, sworn for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is C. H. Lloyd. I am general manager of the Cummer Cypress Company of Jacksonville, Florida. I have been connected with the Cummer Cypress Company since 1919. That is the same company which had and filed [fol. 1904] in this proceeding contracts dated March 20, 1926, between the Atlantic Coast Line Railroad and the Cummer Cypress Company for the transportation of logs by trainload lots from Otter Creek to Lacoochee, Florida. Besides the contract printed in the printed record, page 313, our company had another contract with the Atlantic Coast Line Railroad Company to move trainloads of logs from Homasassa, Florida to Lacoochee, Florida.

Contract dated January 28, 1929, between the Atlantic Coast Line Railroad Company and the Cummer Cypress Company, covering trainload movements of logs from Homasassa, Florida to Lacoochee, Florida, offered in evidence as claimant's exhibit 43-A.

This movement from Homasassa to Lacoochee was a trainload movement, a minimum of 25 cars every other day, holidays and Sundays excepted.

A movement commenced April 3, 1929, and ceased in February 1930. About 75 cars per week were shipped under it. At the Homasassa end the Railroad did not maintain a switch agent. We did it all by placing the load on the side for the Atlantic Coast Line and receiving empties at the other end. There was a double siding. They hooked a locomotive on one end and pulled out for Lacoochee, Florida. It was the same at the other end. The road engine ran the cars into the side track and put the engine on the other end and went back. It was 68.1 miles from Homasassa to Lacoochee. Ordinarily, the loaded log train left [fol. 1905] Homasassa about four A. M. It arrived at Lacoochee about 10:30 the same morning. The trip took about six hours. That was on account of going through those junction points. I don't remember any instance where it exceeded eight hours.

The empties left Lacoochee to return to Homasassa about six thirty in the afternoon and they arrived at Homasassa about 11:30 at night. The trip took about six hours. It was a little shorter on the return trip.

The only service rendered by the railroad company in connection with the movement was to connect the engine and caboose at one end and transport it to Lacoochee and then to disconnect and haul back the empties.

Q. I observe that this contract requires the cypress company to cause all rail shipments of lumber manufactured by the Cypress company from the cypress standing timber aforesaid, consigned by the Cypress Company to points reached by the railroad or its connecting lines or roads to be routed over lines of the railroad and its connections, unless the charges for such shipments over the lines of the Atlantic Coast Line Railroad Company and its connections are higher than the lawfully published rates for like transportation of similar shipments over lines of other transportation companies. Can you say whether or not the Atlantic Coast Line Railroad Company received the required amount of tonnage of manufactured cypress from that?

[fol. 1906] A. I can say unqualifiedly, yes. I would like to make this explanation. That in cutting cypress it is all air dried. It takes quite a period, sometimes from six months to two years before it can be shipped but I can state that the quantity of logs we shipped from Homasassa

into Lacoochee, the entire amount was delivered according to the contract. This contract required a bond for the performance of the contract and we gave that bond.

Our calculations show that the outbound traffic moved on an average of 307 miles over the lines of the Atlantic Coast Line. This cypress lumber is generally sold in the middle West and Northeast with the exception of a good size consumption by Florida. In other words, it is a long haul movement. This movement was completed in February, 1930. After that we transported no cypress over the Atlantic Coast Line for manufacturing and except such as was purchased locally except one million feet we had year before last. We discontinued because the rates were too high to stay in business. (P. 290B of tes.) In other words, the rates were so high we couldn't afford to pay it and compete with the fellows who weren't faced with the situation we were. Yes, I mean the rates prescribed by the Interstate Commerce Commission. When we got through with this movement on the Atlantic Coast Line Railroad we effected other arrangements for the movement of our logs. I said there were 25 cars in a train.

Cross-examination:

By Mr. Alston:

This last contract was entered into the 28th of January, 1929. The rates fixed by the Interstate Commerce Commis-
[fol. 1907] sion were commencing to go into effect about the 8th of February, 1929. That was known by all of them. We continued to operate under our contract of January 28th, 1929, from about April, 1929, until February, 1930, a period of about ten months. The demand for lumber slackened sometime in 1931. It did not begin to slacken in the middle of 1929. We shipped our normal shipment in 1929. I think we had a slightly decrease in price in 1929 and 1931 and on down the line. The falling off of demand and falling off in price do not necessary go hand in hand. We don't cut our price if the demand is strong. On the rise of the market you can sell more stuff. I couldn't say we cut the price on the diminishing demand but I think there was a slight decrease in price in 1929. We surrendered this contract April 1, 1930. For a short period we got our logs

through the logging operation at Lacoochee, Florida. For two months we turned to our logging supplies at Lacoochee and used them in our mill while we were building our log camp. We had 250 to 300 million feet in the neighborhood of Lacoochee. We then built another logging camp over the Lacoochee River at Rutland, Florida, approximately 30 miles from Lacoochee. Lacoochee, Florida, is situated on the east side of the Lacoochee River. Rutland, Florida, is to the north. We are about 12 miles from the Seaboard Air Line Railroad and about the some distance from the Atlantic Coast Line.

We got our logs out to Rutland by building about 12 miles of track and connecting with the Seaboard Air Line Railroad under trackage arrangement, to bring them into Lacoochee. We had to move our logs from Rutland to Lacoochee about 30 miles back down south. We used 19 miles of the Seaboard. We used a per car method of payment. [fol. 1908] We paid $1.50 per car and fifteen cars were a trainload. We operated our own train and engine and had our own crew. We are not using that method of handling our logs at the present time but we will when we resume business. We continued under that method until we stopped shipping logs. (P. 295B of test.) We stopped shipping logs in March of this year. We shipped logs in diminishing quantities last year on account of the market. There was a diminishing demand in 1930. We stopped shipping over the Atlantic Coast Line in February, 1930.

The first train movement out of Rutland was in March 1930. We stopped shipping over the Atlantic Coast Line concurrent with our beginning to ship over the two pieces of rail lines, the one we built, together with the trackage rights over the Seaboard, except for two months that we got our own logs at Lacoochee. We started getting only pine logs from the woods at Lacoochee. We got that in over the main line. We have about fifteen miles there. That line runs out in the forest and the logs are loaded in the forest and brought to our own track.

Redirect examination.

By Mr. Adair:

The cypress mill at Lacoochee has a capacity of about twenty million a year.

Q. What pine business do you do there?

A. We use pine entirely in our box and crate mill. We have only a small crate manufacturing company there. We don't sell pine lumber.

By the Court: The contract was made in January, 1929.

Personally I did not know that the I. C. C. had passed an order fixing this rate, but it was general knowledge. I negotiated the contract myself. The officers of my company signed it.

[fol. 1909] Redirect examination.

By Mr. Adair:

I knew that the Cummer Cypress Company was engaged in litigation with the United States of America, the I. C. C. and the Atlantic Coast Line Railroad Company and the Georgia Public Service Commission over the lawful or unlawful order of the Interstate Commerce Commission that attempted to fix that intrastate rate. We hoped to get the logs moved before it went into effect. The Cummer Cypress Company was a party to that litigation from the beginning.

Court: The second order had been passed.

A. Yes.

Mr. Adair: I will say for the record that the suit of which this proceeding is a continuance had already been filed and the first opinion of this Court had been handed down and the litigation was then proceeding when this contract was made. The Cummer Cypress Company was a party to that litigation insisting that the I. C. C. Order was null and void.

Mr. Alston: I am not sure of the date but my recollection is that the second order had been passed at this time.

Mr. Adair: It wasn't until April, 1929. The second opinion was handed down on March 20, 1929.

Court: But the last order of the I. C. C. was in August 1928?

Mr. Adair: Yes. The order of the Interstate Commerce Commission, upon which an attack was made was in August, 1928, but the suit to enjoin that order was filed November or December, 1928, before this contract was made. The suit was pending when the contract was made. When the

contract was made the first opinion of the Court had come down in which Judge Sibley had said this order was confined to North Florida. What they called the clarifying [fol. 1910] order was made February 7, 1929. This contract was made January 29, 1929.

Both Lacoochee and Homasassa are south of Jacksonville which was the north part of Florida named in the original order of the Interstate Commerce Commission.

C. H. MacPherson, sworn by the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is C. R. MacPherson. I am President and general manager of the Wilson Cypress Company and I live at Palatka, Florida.

The plant of the Wilson Cypress Company is located at Palatka, Florida. At the beginning of the year 1929 we owned about three hundred million feet of timber on the St. Johns River and one hundred and ten million feet over in Dixie, Lafayette and Taylor Counties.

I remember the coming down of the order of the Interstate Commerce Commission, out of which this litigation arose. Our company was a party to that litigation.

Our mill at Palatka burned in January, 1929. (P. 300B of tes.) All of it burned except the planing mill, boiler room and machine shop. None of the docks were burned. The fire occurred after the first opinion of the United States District Court for the Northern Division of Georgia, and before the second opinion.

After the first opinion of the Court came down and while the whole thing was in litigation we had negotiations to determine whether or not there was any way to move our timber in the Western peninsular to Palatka other than by the Atlantic Coast Line Railroad. These negotiations were [fol. 1911] had in February, 1929, with the Live Oak, Perry and Gulf Railroad and with the Seaboard Air Line Railroad with Capps, Vice President of the Seaboard Air Line Railroad, and with Oliver, of the Southern Railroad, to

effect a trackage agreement from out timber in Dixie and Lafayette Counties over their lines into Palatka.

Immediately after the fire we attempted to effect a trackage arrangement with the Atlantic Coast Line but got none. We were going to continue our railroad a distance of eight miles to the Live Oak, Perry and Gulf Railroad and use their tracks to Live Oak and the Seaboard from Like Oak to Lake City and from Lake City to Palatka by way of the Southern, a distance of 130 miles. The distance over the Atlantic Coast Line was 119 miles. I went to Foley of the Live Oak, Perry & Gulf Railroad and he said they would give us trackage rights at six cents per car per mile loaded. There was to be no charge for the return movement. It was six cents per car per mile for a round trip.

Then I went to Norfolk and saw Capps and asked him if they would grant us trackage right over their lines at the same rates, subject to details to be worked out satisfactorily. Capps was Vice President of the Seaboard. He said he would investigate immediately.

Mr. Alston: The conduct, conversations and transactions of other people would be very irrelevant here and we object to it.

Mr. Adair: I think it is very relevant. We propose to show by this witness that at the very time the movement under this high rate sta-ted that trackage could be had on the going market on other railroads in Florida at six cents per round trip with the return empties without charge. We propose to show that in moving trainload movements on a basis like this, after making liberal allowances to the railroad company, that trainload movements was a very profit-[fol. 1912] able business at the Cummer Scale.

The Court: Put it in the record. I will rule on it later.

I went to see Mr. Oliver, Vice President of the Southern Railroad, in Washington. He said he would advise me in a few days. Later, I received advices from him that they were willing to give trackage at the same rate. I then went into the question of rental of equipment and the question of the purchase of equipment and then figured up what the movement would cost us. To what expense we would be put in moving this one hundred million feet of timber we were to move. I think it was in May of that year that we

abandoned the idea on account of conditions of the L. O., P. & G. Railroad tracks. They were in bad condition and couldn't carry a 45 car train we were going to use. We were afraid that the loads would shift and then there were inspection points on account of the different railroads that were involved. We decided that it wasn't practical. That we would likely have so many loads thrown out that the train wouldn't get in full and the mill would have to close down. At the same time we were litigating and were preparing to carry the case to the Supreme Court. We figured we had a good case. We knew what we were paying them on movements to Palatka, Florida. We knew what their expenses were under the Cummer Scale. It looked like, after figuring the overhead and all expenses, they had a sweet profit and we wouldn't take chances on operating over the L. O., P. & G. Railroad.

[fol. 1913] While we were considering the matter of movements, we compiled figured with respect to the cost of transporting those logs over the L. O., P. & G. Railroad, the Seaboard Railroad and the G. S. & F. Railroad under such trackage agreement.

We figured the cost of building a main line railroad, which was based on past main line construction performance, to join up at Mayo, was $2500.00 per mile, or 20 cents per thousand on the balance of the timber to be logged, or moved, namely, 100 million feet. We figured the maintenance of this additional main line, which was our own line, would be ten cents per thousand feet. Additional fuel for each haul over our main line was ten cents per thousand feet, based on past performance. That had to come off before the logs hit the common carrier. We figured that the trackage agreement would work out at six cents per car, per mile. A round trip, of 131.6 miles, made a charge of $7.89 per car cost. Train crew, fuel, water and oil, based on past railroad performance, we found would be $6.45 per car. The average of our shipment being 5500 feet to the car, that would cost us $2.61 per thousand feet for this service. The next step was to get equipment of sufficient weight and size to handle trains and tonnage to keep the sawmill going. We figured on the purchase of 125 cars of 80,000 pound capacity, passing the I. C. C. inspection, for $300.00 each, from the Georgia Car & Locomotive

Company, of Atlanta, Georgia. We need 125 cars to make up three trains a week of 40 cars each, which was our mill capacity. That would cost us $37,500.00, or 37½ cents per thousand feet, based on a 100 million feet of timber we had to move. We offered a special type locomotive of 333,200 [fol. 1914] pounds by the Georgia Car & Locomotive Works, of Atlanta, passing the I. C. C. inspection, for $35,000.00, or 35 cents per thousand feet of timber we had left. On the performance over the Atlantic Coast Line, we figured it would cost us 28 cents per thousand feet to maintain the cars in the main line service. We added 23 cents per thousand feet for unforeseen things that would come up, per thousand feet, and putting all of this together we had an additional railroad construction at 20 cents per thousand feet, additional railroad maintenance and road construction at ten cents per thousand; additional fuel and oil, trainload, ten cents per thousand; *additional fuel and oil, trainload, ten cents per thousand;* main line track service, fuel and oil and water at 2.61 per thousand. The purchase of cars at 37½ cents per thousand, the purchase of the locomotive at 35 cents per thousand; car maintenance at 28 cents per thousand, and 23 cents per thousand added for unforeseen things that would come up would make $4.24½ per thousand. We figured close on the purchase of the cars. We figured it would take us three years to move this timber. We figured that we would have $15,000.00 salvage on the locomotive after three years, and $12,500.00 salvage on the cars after we completed the operation at 27½ cents, therefore we figured the final cost of delivering the logs at the mill of 4.2450, plus interest of 13½, total 4.38, less the salvage of 27½, leaving a total of $4.10½ per thousand.

We figured the cost on the Atlantic Coast Line under the Cummer scale on a basis of 11 pounds. Those logs weighed eleven pounds. We figured ten pounds rough dried and green weight cypress at 12 pounds the way we girdled it. This was based on past experience in hauling over the Atlantic Coast Line the same distance and it would average slightly over 11 pounds.

[fol. 1915] The Court: What basis was the Cummer scale?

Mr. Adair: That is not on a thousand feet, it is on the hundred pound weight.

Translating the Cummer scale to the cost per thousand feet on a basis of eleven pounds the Cummer scale cost was $3.52 on Atlantic Coast Line movements. Those figures were prepared by Baptist, Log Superintendent, under my direction, and at that time F. H. Wilson was general manager. He is dead now. I have been over these figures sufficiently to satisfy myself of their correctness. I had correspondence with Capps of the Seaboard about the rental of equipment from them.

This letter dated March 2, 1929, directed to the Wilson Lumber Company, Palatka, Florida, attention Mr. MacPherson, signed by C. R. Capps, first Vice President, was a letter intended for me and it was received.

Copy of a letter mailed by E. C. Bagwell, General Manager, to C. R. Capps, First Vice President, dated Savannah, Georgia, February 23, 1929, came with the letter of Capps. I offer this letter and copy as Exhibit No. 44-A.

Mr. Adair (reading):

EXHIBIT 44-A

"Norfolk, Virginia, March 2, 1929.

Wilson Lumber Company,
Palatka, Florida.

Attention Mr. McPherson.

DEAR MR. MCPHERSON:

When you were here February 2nd, you asked me for certain information which I subsequently undertook to develop through our Operating Department. I now enclose [fol. 1916] copy of letter of February 23rd from Mr. Bagwell, our General Manager, which will give you the information you want.

With respect to the coal price, that works out very high because we use in Florida West Virginia coal which carried a very high commercial freight rate to Florida. Under the law we would be obliged to charge you the commercial freight rate on whatever coal we should sell you at Live Oak. I dare say that you could get a very much better coal price from the Live Oak, Perry & Gulf Railroad, which

doubtless uses Alabama coal which reaches Live Oak on a very much less freight rate than West Virginia coal.

If there is any further information I can give you in the matter, please let me know.

Yours very truly,

C. R. Capps, First Vice-President."

In our calculations we figured that it would be cheaper to buy our equipment, both locomotive and cars. We had a talk about the rental of cars at one dollar per car per day, but I don't remember from whom we got that figure. I suggested six cents per mile after talking with Oliver. Afterwards, he said he would give us that rate. Capps told me off hand that he thought it would be all right. Later, both agreed that it was all right. In the talk I had neither of these gentlemen made any point with respect to the weight of the car to be operated over the road at six cents per car mile. They were going to split the outbound [fol. 1917] movements from Palatka, Florida. This is a letter from Capps stating that Oliver and Capps had come to an understanding as to routing the outbound lumber. This memorandum was attached to the letter.

I offer this letter of March 19, 1929, as claimant's exhibit No. 45-A. The letter reads as follows:

EXHIBIT 45-A

"Norfolk, Va., March 19, 1929.
(At Washington)

Mr. C. R. McPherson, President, Wilson Cypress Company, Palatka, Florida.

DEAR MR. MCPHERSON:

With further reference to contemplated log trackage arrangement over the L. O. P. & G. Seaboard and G. S. & F. Railroad, Mr. Oliver and I have now come to an understanding as to the routing of the equivalent in lumber to the output of your cypress logs handled over our lines under the proposed trackage arrangement.

I enclose a copy of the routing memorandum which is dated March 18th. This memorandum gives the quantity as approximately 200 million feet. However, I find that my pencil notes give the quantity as aproximately 100 mil-

lion feet. If the memorandum is in error as to the quantity that will make no difference since the memorandum is intended to deal only with the equivalent in lumber of the logs actually handled. You will note the memorandum states you are to ship out "currently," etc. By the use of the word currently we mean substantially currently. We [fol. 1918] understand that your stock on hand and your lack of obligation to other railroads will enable you to carry out this provision of the memorandum without embarrassment.

With your acceptance of this memorandum we are prepared to draw and submit you a trackage agreement whenever you are ready for it.

Yours very truly,

C. R. Capps, First Vice-President."

I might say they were wrong in naming two hundred million feet instead of one hundred million feet. The services performed by the Atlantic Coast Line in the transportation of logs from Hines to Palatka, both during and since the period of the high rate is as follows: We made up the train with our own locomotive at Hines. All that the Atlantic Coast Line did was to hook on the main line locomotive and caboose and start for Palatka. It usually pulled out between 4:30 and six o'clock in the afternon, getting into Palatka around midnight, sometimes around two o'clock. At that time the main line crew knocked off. Between five and six o'clock in the morning the night switching engine cut the train in two, taking the first cut of logs to our mill yard. They were unloaded and the empties pulled out between ten o'clock in the morning and two o'clock in the afternoon. At the convenience of the day switching crew the second cut was put in the yards. That second cut was hauled out between four and six o'clock and the train made up and started back for Hines between six and eight o'clock. There was only one cut of the train at [fol. 1919] Palatka and no switching service rendered at the Hines end.

It took about eight hours on the southbound movement with the loaded train and about six hours coming back. About 13 miles of this distance of 119 miles was over the main line from Newberry to Lake City. I have a memorandum which shows that we expended $15,317.43 during

the period of the high rate on maintenance of Atlantic Coast Coast Line cars. The contract provided that we were to stand repairs for such damages that happened in the woods when the cars were in our possession and as a practical matter you couldn't very well differentiate what happened in the woods and what happened on the main line and the burden was on us and we paid about all the repairs unless there was a main line wreck where there wasn't any question about it.

The cars used to be taken to High Springs and repaired and we made an agreement with the Railroad Company in which they permitted us to handle all repairs in our shop except car wheels and bracing and the like. We could do it cheaper than they could do it and in that way we saved considerable money. That covered redecking the cars. It covered everything but the wheels and rebracing it.

The memorandum referred to was offered as claimant's exhibit 46-A.

We paid half of the cost of inspecting the cars. The railroad paid the other half. That is true at Hines but I [fol. 1920] don't think we paid half at Palatka. However, I don't know. The rate which was prescribed by the Interstate Commerce Commission and the unlawful order which was set aside in the United States District Court recently as a measure of the charge to be applied to our log train movements from Hines to Palatka, is perfectly absurd. We knew that it cost $175.00 to run that train. I mean out of pocket expense. And we use to give a check three times a week for around $800.00 on the Cummer scale. On the other scale it would run up around $1,700.00 a week. The traffic will not bear that rate. The traffic will not bear substantially more than the Cummer scale.

The Interstate Commerce Commission later passed another order fixing the intrastate rate. That order is under attack. We brought a suit to enjoin that order and it is in the Supreme Court now.

"Q. In the event this Intertsate Commerce Commission scale, this order of the Interstate Commerce Commission is sustained in respect to the Cummer Scale generally, what do you propose to do with respect to your operation at Palatka?

"A. We are not running a plant there now but we built a small mill in the timber in Dixie County which we started operating this year. We can cut six million feet a year with one shift and if the market justifies it we can put on two shifts and cut twelve million feet. If we had a reasonable rate we would haul the select logs from Dixie County to Palatka. We would rather do it that way because we have a mill and planning mill and everything there. If we can't, we can't and we will have to do it by [fol. 1921] small mills. The way it looks to me we will have to slap it all out depending on the rate and cut board timber, ties and stuff like that."

Under present conditions a reasonable rate ought to be lower than the Cummer Scale. (P. 315B of tes.) I mean some scale near the Cummer Scale. We can't compete with Burton-Swartz otherwise. We will not haul any of that timber at the rate prescribed by the Interstate Commerce Commission.

Since this row with the Interstate Commerce Commission and the Atlantic Coast Line commenced, I have had a talk with some of the officials of the Atlantic Coast Line with respect to the levy and operation of this rate. In the spring of 1929 when we were rebuilding our mill and were figuring with the Seaboard and Southern on trackage rights, I had a talk with the Superintendent of the division under which our logs came over. He said he didn't know what the division would do about it. That ours was a lifesaver for the division. Right after that I wrote you a letter telling you what he said. He said since Brooks-Scanlon had put their mill in the woods, he hoped we would continue to haul over his division. He said his division received a larger revenue from the timber and vegetable movements than anything else but he said the claims were so large on vegetables that our business was the best tonnage he had. He said the claims on vegetables were high but there was none on the lumber and logs.

The Wilson Cypress Company has not made a claim against the Atlantic Coast Line Railroad since our movement began. Going back to the matter of cost about which [fol. 1922] I testified, upon those trackage agreements, I did not include in the cost anything for switching at Palatka. There was a switching charge there of $2.25 per car by the G. S. & F. and Atlantic Coast Line. The G. S.

& F. couldn't get in our yard. It was about a mile from us on the other side of town. In order to get around the charge of $2.25 we figured on building a trestle over the Atlantic Coast Line tracks. We had water and everything there. I think we could do that for less than $2.25 per car. What the actual cost was I don't remember right now.

Cross-examination.

By Mr. Alston:

Yes, I was sworn in a hearing in this case before the Interstate Commerce Commission in June in Jacksonville, Florida. At that hearing I was examined by Mr. Norman and Mr. Norman asked me this question, "Now, as I understand you to testify that you have about fifty million feet to transport by the Atlantic Coast Line, and when that is cut you will no longer ship logs by the Atlantic Coast Line?" and I answered, "Yes." I was talking about the lands in what I call West Florida.

Q. And not what you call the St. Johns. Let me get that straight about what you testified about yesterday. I have a map of that part of the Atlantic Coast Line in Florida, contained in the Atlantic Coast Line time table. This map shows the L. O., P. & G. Railroad running from Loughridge, Florida, through Perry to Live Oak.

A. Yes.

[fol. 1923] Q. It shows a point called Mayo Junction?

A. Yes.

Q. And then running Southeast to Alton?

A. Yes, sir.

Q. Is that Alton shown on this map the place you were talking about you said you contemplated building a line, extending the line about eight miles to Alton?

A. Yes, or Mayo. I think they abandoned the track between there. This letter which I discussed yesterday does not mention Mayo. When we made those figures up we figured both places. Later, at the tail end of the negotiations we found that the track between Alton and Mayo had been abandoned and we intended to go to Mayo by building a mile more track. That is my recollection. I said yesterday we were going to tap the L. O., P. & G. at Alton or Mayo. In other words, our proposition would have carried the shipments to Live Oak where they would

have been transported to the Seaboard Air Line and then would have moved in a Southeastern direction to Lake City. It is about 26 miles from Live Oak to Lake City I think. At Lake City the movement would have been transferred to the G. S. & F. and would have proceeded down to Palatka, Florida. That movement being a little more Southeastern. The aggregate of the entire transportation would have been 131.6 miles. Each one of these shipments would pass through three junction points or inspection points. These inspection points were Live Oak and Lake City and I don't know where the other one was. Yes, the fact that they were to be so inspected at those points was one reason which made the route unattractive to us. We feared the inspection because of the condition [fol. 1924] of the Live Oak, Perry & Gulf Railroad track. We figured that the logs might shift or the load might shift on the track and the inspection being (P. 320B of tes.) very technical, that might force us to lay out cars and reload and therefore, it would be expensive and would curtail the operation of the plant at Palatka.

Q. Did you make calculations in this cost for such items?

A. We had several contingencies. We fixed wrecks and things at 23 cents per thousand. I don't know how this contingency cost was made up.

Q. Let's go to the letter filed by Wilson Cypress Company, dated April 28th, 1933, and addressed to you. The second paragraph of the letter begins, "At this particular time our main line is within eight miles of Alton in which we could have connected with the L. O., P. & G. Railroad at that point." What is he referring to "at this particular time"?

A. He has reference to the spring of 1929 when our main line was there. It has since been removed from there.

Q. Now, the point of contact you were to make with the L. O., P. & G. Railroad was here. Indicate on that map, if you please, where your own railroad began and ended. I mean the road which is referred to in the above mentioned quotation, as quoted, "our main line."

[fol. 1925] A. Our road runs from Hines about four miles to our camp. At that time it extended—I can't tell you how far, I can't say about the exact mileage—to a point which was eight miles south of Alton, Florida.

Q. Now let's see, the Live Oak, Perry & Gulf Railroad from Alton had been taken up to there (indicating on map).

A. I don't know whether it had been taken up or not but they were going to take it up. The road was in bad condition from Alton to Mayo. In later negotiations we were to take it up to Mayo. I don't know whether it had been taken up at that time or not. We have taken up our lines since that time. We logged the latter half of 1929 and all of 1930 and half of 1931. After that it was taken up and our main line extended east.

In other words, our line extended east from a point which was about four miles from Hines, Florida. I don't know how far east it extended. Our main line is not completed.

Q. After you go east you turn directly north?

A. We have got a spur there.

The condition of the L. O., P. & G. between Mayo and Mayo Junction was not good. It was worse than the condition between Mayo Junction and Live Oak. My recollection is that the distance between Mayo Junction and Mayo is about 19 miles.

I am the general manager at the present time but I was not general manager at that time. I have been general manager since 1931. The condition between Mayo Junction and Live Oak wasn't anything to brag about but it was a better track than between Mayo and Mayo Junction.

[fol. 1926] I think the distance between Mayo Junction and Live Oak over the L. O., P. & G. was around 35 miles. Our main line is no longer within eight miles of Alton. The L. O., P. & G. no longer has a main line to Alton. I understand they have a line to Mayo. I have never been over that territory from Mayo to Mayo Junction. I think I was over the Live Oak, Perry & Gulf territory about ten years ago.

We were going to build a main line estimated at $2,500.00 per mile. I don't know what weight of steel Baptist was figuring on. We would have done our own grading. Baptist can answer those questions better than I can. He planned it and worked the figures on it and we were relying on his figures. We figured the capital construction of our main line at 20 cents per thousand feet.

In order for this calculation to be correct it was necessary that the major premises should be correct, towit, one hun-

dred million feet of logs. We estimated the cost in maintenance of additional track and we put that at ten cents per thousand feet against the total amount of the timber we had left. All of that one hundred million feet of timber must have moved over this track in order to make that part right.

The letter which I used as a memorandum makes an allowance of ten cents per thousand feet of logs hauled "additional fuel used for extra haul." "For extra haul" means the extra eight miles (P. 325B of tes.).

Q. You only had part of your track built. He means the eight miles beyond the four miles you already had.

A. No, sir, a new four miles, the extra miles going from the north of the line to Alton. Our figure of ten cents per thousand was based on our experience in hauling over that line. We would have hauled those logs over any part [fol. 1927] of our whole line. I don't know how far north our whole line extended at that time. I think there was about 25 or 26 miles in addition to the proposed extension to Alton and Mayo.

Q. What have you allowed for fuel and expenses of a haul over that line?

A. We figured that expense would be incident to our general logging for this reason. The timber that remained to be taken out was one hundred million feet and it lay here (indicating on map). The main line extended to here. We still had some timber on the main line going north, but the track has been pulled up. We looked at it from the standpoint of one hundred million feet of timber. Part of the timber we would not have to haul because it lay near that junction point. Lay near the point where our extension would have to go north, where it would be extended on this north main line. We would not have much to haul from there. The balance of the timber lay east where we would have an extremely long haul. In going out to Hines, we would have a long haul on our railroad to both places, from our north main line and east main line. We figured our actual logging cost had other elements involved to be reduced because of the timber that lay near that junction point.

There was no discussion that I know of concerning the taking up, stopping or dismantling of the line of the

Georgia Southern & Florida Railroad into Palatka. I have never been over that road. I don't know its condition.

Q. You have made an estimate of cost of train crew, fuel, water and oil based on certain railroad performance. You found that would be $6.45 per car, as I understand the let-
[fol. 1928] ter. In the bottom of this letter in the last paragraph are the words, "Figures used for train service crew, fuel, water and oil were gathered from the crew of the Atlantic Coast Line service on our log train at that time." It was common talk with the members of the crew?

A. Mr. Baptist can tell you about that.

Q. But it does not purport to have any higher basis than that. You have said in this letter "our general average being 5500, giving us the cost of 2.61 for this service." I guess it means an average load of your car of 5500?

A. That was generally true. It has run lower and higher.

Q. It says, "cost of 2.61 per thousand feet for this service." I construe "this service" relates to cost of six cents per mile train cost, plus train crew, fuel, water and oil, which is referred to in that same general paragraph of the letter.

A. That is the way I construe it. I haven't checked the figures. In order to make that right it is essential that this information which I got from the crew of the Atlantic Coast Line service on this log train per car. I used eleven pounds per foot for that 5500. In order for that calculation to be correct it is essential for that average to have been correct. There is a difference in the weight of cypress logs. Green timber weighs twelve pounds to the foot, but there is fluctuation in the length of time the logs have laid on the ground and it will run between ten and twelve pounds to the foot, depending on the condition. This figure is based on an average of our girdled timber. We base our calculations on feet rather than on pounds, because the lumber business is figured on feet. We used an estimate from a number of years experience in hauling logs from the same timber under the same conditions.

[fol. 1929] I don't know of anything better than past experience. This plan contemplated the purchase of flat cars of 80,000 pounds capacity. That is forty tons capacity. We used 80,000 pounds capacity cars. That is a pretty good size car. It takes a strong locomotive to pull it and a heavy track to sustain it and as little grades as we can

get. We were to have 125 of those cars to be purchased at 300 dollars each. We had a letter to the effect that we could get them for that sum. We were going to have three trains a week and the trains were to average 40 cars to the train. (P. 330B of tes.)

We estimated that cost at $37,500.00. We put aside 37½ cents per thousand feet against that 100 million feet to cover this $37,500.00. Then again, the correctness of that depends on the amount of timber and the cost of cars, etc.

We contemplated getting a special locomotive weighing 333,200 pounds at a cost of $35,000.00. That is a heavy locomotive. We were to charge that off at the rate of 35 cents per thousand feet against that timber. We then figured that we would pay six per cent interest on the purchase of the cars and locomotive, which comes to $13,050.00 over a period of three years. The correctness of that amount depended on the same conditions. We did not put in anything for the cost of the tracks of the railroad.

We figured we would have fifteen thousand dollars salvage on the locomotive and on the cars and we subtracted 27½ cents per thousand from the cost.

Q. And, of course, the correctness of that depended on whether you could sell or couldn't sell the locomotive and cars.

[fol. 1930] A. It would have a salvage value because it would have to be maintained to handle the movements and would only be in use for three years and therefore it would have a salvage value. I don't know what the value would have been. That plan is impractical because of the conditions of the L. O., P. & G. Railroad, if for no other reason.

Redirect examination.

By Mr. Adair:

Q. You said you didn't put in anything for interest on the tracks of the tracks. What railroad do you mean?

A. The extension.

Q. Your railroad there?

A. For the amount expended for the eight mile extension.

Recross examination.

By Mr. Alston:

There is nothing in my calculations for taxes and overhead. They go on forever anyway. I can't tell you at what figure the coal has been taken into account in ascertainment of cost. Mr. Baptist will tell you that.

Redirect examination.

By Mr. Adair:

According to my best information and belief we had 100 million feet of timber in the West Florida tract. It has developed from our cuttings since that time that we had about that time about 110 million feet. That is, in February and March, 1929.

It has been pointed out that in the Summer of 1931 in Jacksonville, Florida, I testified that our holding in West Florida was around 50 million feet. I was referring to the time I was then testifying. That proceeding in which I was then testifying was a proceeding before the Interstate Commerce Commission in a re-opening proceeding, which had to do with prospective return for the future. This fifty million feet that we then owned in West Florida was [fol. 1931] what we owned in the summer of 1931. This 110 million feet which I was talking about in my estimate was the 100 million feet which we then owned in the spring of 1929. Our mill shut down in 1931.

In our switching arrangement at Palatka we took out two cuts. There were four movements of the switching engine. It took in half of the load and pulled out the other half. There were four movements over about a mile. I don't think that operation took very long because they were switching all over town. There was no switching engine kept there at Palatka for the sole use of the Wilson Cypress Company. The yardmaster of the Atlantic Coast Line, Campbell told me that day before yesterday.

Objection by Mr. Alston that this is hearsay.

Argument by Mr. Adair that this was an admission and therefore admissible.

The Court: I think there is a difference where it is made in the line of duty and where it is not made in the line of duty.

Mr. Adair: This was in line of duty. He had charge of the switching operations at Palatka.

Witness continuing:

We have 125 log cars and they are equipped with pockets in which there is a wood extension. There are some trips on each side, trips to the pockets when the car is unloaded. On the top is a chain which runs across the top of the car to hold the load in place. We maintain them for the easiness of unloading because our contract requires that we use patented devices. They are maintained by our company and fixed so we can load the cars heavy and then hold the load in place, which eliminates the chance of wreck by the load rolling off the car. The Wilson Cypress Company [fol. 1932] paid for and maintained that. I would say it took from three to five minutes to unload a car with this patented device. We just pulled the trigger and it does the rest. Mr. Baptist would know better how the logs are loaded than I. Here is a letter directed by the Georgia Car & Locomotive Company to F. H. Wilson, General Manager of the Wilson Cypress Comany, Palatka.

Q. Examine that letter and tell me what the quotations were you had on railroad cars at that time.

A. We had quotations on cars of $285.00 plus freight of $24.30, and we also had a quotation of $265.00 plus freight of $73.56. We have used the figure $300.00 in our calculation, but we got a price of $300.00 after this letter was received plus the freight, making a charge of more than $300.00. The figures in this letter are $285.00 each, f. o. b. Montgomery, Alabama.

This letter offered in evidence as claimant's Exhibit 47-A.

Lumber is sold by the feet. It is customary for the calculations to be made by the feet in the conduct of the lumber business in respect to cost. In making the calculations it was not necessary to deal with pounds at all for our purpose. The offer of trackage rights was not on the basis of pounds, consequently, in order to determine the cost accurately, it was feet that we were interested in, not pounds.

Recross examination.

By Mr. Alston:

Let's go back a little now about the timber business; you gave some testimony in 1931 before the Interstate Commerce Commission, and I now read from page 1281 of the [fol. 1933] record, as follows: "Q. Mr. McPherson where is your timber located, geographically speaking, in what portions of the State? A. Oh, we have about 50,000,000 feet left over in the western peninsula, and we have about 300,000,000 feet on the St. Johns river tributary to Palatka." Is that right?

A. Yes, sir.

Q. You seem to have been asked this question: "Do you use any logs other than what you raft up the river there? A. Well, we are not rafting any logs at all as long as we are working in the western part of the peninsula. Our main movement is from Hines by rails over the Atlantic Coast Line to Palatka and has been since 1924 and will be until this 50,000,000 feet are cut out, unless we make some other disposition of that timber." Is that right?

A. Yes, sir.

Q. Now at the same hearing you seem to have been asked the following question: "Now, how many feet per car of cypress lumber? A. I said I think it runs between 6,000 and 6,500 feet to the car ordinarily. It depends on the class of timber that you are in and the loading, and it varies at different times under different conditions. We have run as low as 4,500 feet to the car." Is that right?

A. The average was 5,500 feet.

Q. Was that testimony that I have just read given by you?

A. Yes, sir.

[fol. 1934] Q. Was that testimony given by you?

A. Yes, sir.

Q. Now let's go to your testimony at page 1282 about your shipments; I read you as follows: "Mr. McPherson, if you have a memorandum before you of the number of cars, the amount of freight paid from 1926 to 1930 inclusive, please read from that memorandum the total number of cars by years and the amount of freights paid by years to the Atlantic Coast Line Railroad Company for the trans-

portation of logs from your western peninsula tract of timber to your mill site at Palatka? A. In 1926 we had 4,233 cars with $71,742.75 paid in freight. In 1927 we had 4,754 cars with $93,219.37 freight. In 1928 we had 5,531 cars with $109,138.07 freight. In 1929 we had 2,140 cars with $83,098.99 freight. In 1930 we had 5,142 cars with $205,096.20 freight. A total of 21,800 cars and a total of $562,295.38 freight." Is that right?

A. Yes, sir.

Q. Apparently your heaviest shipment, as measured by cars, was in 1928, when it was 5,531 cars, and your next heaviest was in 1930 when it was 5,142. You testified that some part of 1931, you wasn't operating?

A. We shut down in the summer of 1931.

Q. You shut down in the summer of 1931?

A. Yes, sir.

Q. And stopped shipping from this western peninsula?

A. We have not run a sawmill.

Q. Either from the St. Johns or otherwise?

A. No, sir.

Q. In 1929 you had a fire?

A. Yes, sir.

[fol. 1935] Q. When was it?

A. It was early in January.

Q. How long were you incapacitated?

A. We started sawing in September—about four months.

Q. About four months?

A. Yes, sir.

Redirect examination.

By Mr. Adair:

I testified that the number of feet that we were loading in the Summer of 1931 was 6500 feet to the average car. I don't know where I got the figures, whether it was recollection or based on actual computation. I would say that our loads are heavier than they were a year ago. This was based on average experience.

(Witness excused.)

E. C. GREEN, recalled by the claimants, testified as follows:

Direct examination.

By Mr. Adair:

I have prepared a statement — shows the effective date of the tariffs about which I testified on yesterday and also whether or not they are still in effect and if not, when they went out. The statement shows the tariffs and the effective dates of the tariffs to which I testified and the D. C. C. numbers. In the fourth column I have shown if that same rate between the same points was published in any tariff effective on a prior date than the tariff to which I testified and then the next column I have shown at the same rate between the same points whether or not the same rate is published in the same or later tariff than the one I testi- [fol. 1936] fied to and which I introduced in evidence. The last column shows whether the same rates are still in effect at the present time. In other words the tariff that I introduced into evidence is still in effect at the present time.

From an examination of my tariff you can tell whether or not it was published and whether or not it is still in effect. That is explanatory.

During the same period the I. C. C. passed an order making a general increase in freight tariffs. That would not be applicable to any of these tariffs because none of those rates were established prior to 1925, and because the increase occurred in 1918 and 1920, with one general decrease in 1922. There has not been a general increase since that time.

Recross-examination.

By Mr. Alston:

Ex parte 74 applied to all rates. In 1918 there was a general increase and also in 1920 and there was a general decrease in 1925.

There is no tariff in this exhibit that was involved in the general increase or general decrease because there hasn't been any since 1922.

Redirect examination.

By Mr. Adair:

In No. 74 I think there was a twenty percent increase. In 1918 the increase was 25% and it was put on there by the Interstate Commerce Commission after the Transportation Act. In 1922 there was a horizontal decrease. There hasn't been any horizontal decrease since 1922 involving all commodities.

[fol. 1937] There was not a general increase a year or two ago. It did not affect logs one way or the other.

The exhibit referred to by the witness offered as claimant's Exhibit 48-A.

Recross-examination.

By Mr. Alston:

I base my statement that the tariffs are all in effect now upon a personal examination of the original tariffs on file with the Interstate Commerce Commission in Washington. The face of each tariff shows when and where it was cancelled. It is also done by supplement.

I made my examination within the past six weeks in Washington at the office of the Interstate Commerce Commission. In other words, I did not depend upon my records. I consulted the files. It was on each tariff whether there is a transit arrangement or not. I testified yesterday about the transit arrangement on each tariff.

(Witness excused.)

R. C. Baptist, sworn by the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is R. C. Baptist. I am logging superintendent for the Wilson Cypress Company and I live at Hines, Florida. (P. 345B of tes.) I have been logging superintendent for the Wilson Cypress Company for seven and

a half years. Before that time I was logging superintendent for the Fletcher & Moore Company, of Louisiana. I was with them about 14 years and with the Louisiana Cypress Company about three years. Prior to that I came out of school and went to work in the woods. My whole [fol. 1938] business experience has been devoted to logging operations.

My duties as logging superintendent for the Wilson Cypress Company at Hines, Florida, were to see that the mill did not run out of logs. I am in complete charge of the operation and I am on the spot. I remember an occasion when figures were compiled by me relative to the probable cost of operation of log trains from the Wilson Cypress Company timber in the so-called Perry district to Palatka, Florida, over the Live Oak, Perry & Gulf Railroad, the Seaboard Air Line and Georgia Southern & Florida Railroad. At that particular time, in the Spring of 1929, we were trying to get trackage rights over the Live Oak, Perry & Gulf Railroad, the Seaboard Air Line Railroad and the Southern and we got up some figures on it. At that particular time our North main line was within eight miles of Alton. It was on the Live Oak, Perry & Gulf Railroad. It is about a mile from Alton to Mayo. The Live Oak, Perry & Gulf was still connecting Alton and Mayo. The track was down there but I don't think they were running any trains further than Mayo. We figured that we would have eight miles of main line construction. We estimated the cost of building eight miles of railroad at $2500.00 per mile.

We figured that we would have 100 million feet of timber to move which divided back would have been equal to 20 cents per thousand. Then we figured maintenance of that additional eight miles of railroad at ten cents per thousand and that additional fuel, etc. for operating the trains would be 10 cents per mile. That is, operating the train for that eight additional miles. That would have put the logs at Alton instead of Hines.

[fol. 1939] At that particular time we were using Alabama coal and were paying two dollars a ton and the freight rate and everything ran it up to about $6.10 a ton. We were using that kind of coal because a small train, or the one we had, would not burn the other kind of coal. I understand they had a trackage arrangement over the Live Oak, Perry & Gulf from Live Oak to Lake City, and from Lake

City to Palatka, for six cents per car per mile, round trip; for a distance of 131.6 miles it would have made it $7.98 per car. There was a cost of train crew, fuel, water and oil, based on railroad performance that we found to be $6.45 per car. Our general average load in the woods is 5500 feet to the car, and that divided back would have given $2.61 per thousand for that main line service. I got my figures with respect to the train crew from the train crew and from the agent who use- to be stationed there. I understand that the engineer got twenty dollars a round trip, the fireman fourteen dollars, the brakeman and fireman thirteen dollars apiece, and the conductor twenty dollars. I understood that they consumed thirty tons of coal on the trip, using mine run coal at $1.50, or we could have bought it for that. It would have cost us $5.68, and the water and oil was ten dollars. That was the information from railroad source. I don't know just what the figures were for water but it was so much per tank and all that added together would have been $2.58 and we proposed to run a forty car train and I divided back and got $6.45 a round trip. Our general average was 5,500 feet to the car. I don't know how long a period that ran but for the past two years.

[fol. 1940] Some months we dropped over and some months under. At the end of each month the company gets out a statement showing its logging performance and it has a lot of subheads. My experience as to the weight of cypress has been that it will run eleven pounds to the foot on on average. Continuing with my tabulation, the next thing was to get cars and a locomotive heavy enough to handle a forty car train, and through Cheatham, who was salesman of the Georgia Car and Locomotive Company, we could have bought the cars for $300.00 of 80,000 pounds capacity each, that would have passed the I. C. C. inspection and we could have bought a locomotive of 333,000 pounds like the one the Atlantic Coast Line was using on their log train for $35,000.00. The cars divided back into 100 million feet of timber which we proposed to move amounted to 37½ cents per thousand. The locomotive divided back would have been 35 cents per thousand feet. Then the next thing to take into consideration was the maintenance of equipment for the logging of logs and to pass I. C. C. inspection, and their performance over the Atlantic Coast Line in 1929

showed it would have cost us 28 cents per thousand to maintain the cars. Then we added 23 cents per thousand for unforeseen things which would have come up, and adding that all together we got a cost of $4.2450 per thousand. Then we figured the interest on the investment for the equipment being 13¼ cents per thousand. We figured the salvage of the equipment at the completion of the operation at 27½ cents per thousand, arriving at a cost of $4.1050 on a trackage arrangement to deliver the logs at Palatka. I have here 23 cents per thousand for extra service. By extra service [fol. 1941] I mean that sometimes you would have to send out and straighten up a load and then there was the possibility of wrecks. There was nothing else that we knew of at that time to be taken into account in the ordinary operation of trains under that sort of service. (P. 350B of tes.)

Our plant is not located on the tracks of the Georgia Southern & Florida in Palatka. This operation was over three separate railroads that would have added to the complication of the inspection of each one. I understand that every time a connection with another road or each time our trains would have connected with another road an inspection of the train would have had to be had. The service rendered by the railroad company in connection with the transportation of those logs from Hines to Palatka, at Hines, was that the log train is pulled into the main line and the log engine cut loose and the empties come in and we run around and pick it up at the other end and put the empties around on our main line and they stay there until time to leave. They leave between four and six in the afternoon. It is ordinarily a night time movement to that extent. There is no regular movement over that track after about eight o'clock at night so far as I know. There is passenger service over the line after half past four o'clock in the afternoon, but at that time there wasn't. I think the Southland now runs through at night or late in the afternoon. No switching service was performed at the Hines end.

Q. Do you know whether or not that was based on a weight estimate?

A. I think it was an estimated weight.

[fol. 1942] Q. During this period?

A. Yes, sir.

Q. That estimate, was that a fixed weight or was it based from time to time on test?

A. From time to time on test. I think it ran from 58 thousand to 68 thousand. When we stopped it was around 65 thousand. At sometimes the weight of our cypress will run heavier than at other times. Wet cypress varies quite a good deal. Dry cypress and green cypress will run from ten to twelve pounds and by the time you girdle, if it is a wet season it is heavier than it would be in a dry season. At the time the estimate was made up our North main line in a general way ran North and was within eight miles of Alton. We proposed to connect either at Alton or Mayo and the track from Mayo to Alton was in bad shape because the Live Oak, Perry & Gulf ran only to Mayo at that time and was using a connection at Alton. That road went on to Live Oak from there. The Seaboard ran to Lake City.

Q. From Lake City to Palatka?

A. It takes the Southern there and came in here (indicating on map.) I said the distance from Alton to Mayo was about one mile. I don't remember how far it was from Mayo Junction. Tracing the shipment from Hines to Palatka on this Atlantic Coast Line map it went from Hines to Wilcox, from there to Newberry, from there to Burnette's Lake and from Burnette's Lake into Palatka. The haul from Hines to Wilcox is on the line known as the Perry [fol. 1943] Branch. I don't know whether it was a main line or not. I couldn't say whether the haul from Wilcox to Newberry is on a main line but from Burnett's Lake into Palatka, it is known as the Palatka Branch.

Cross-examination.

By Mr. Alston:

I don't know how far the Georgia Southern & Florida Railroad yards are from our Palatka yards where we unload logs. The Atlantic Coast Line does go into our yards. I don't know how the logs would be handled after they got to Palatka over the Georgia Southern & Florida Railroad. I know how they would be handled after they got in over the Atlantic Coast Line for there is a track in there which goes right to the unloading point. Our company did not make the arrangements which are indicated in my letter. This was in the early part of 1929. I didn't propose that my plan go in earlier than that. That was when we began to work it out. After my company got the information

which I have undertaken to set out in that letter of April 28, 1933, and in my testimony here, it did not proceed any further. They continued to operate over the Atlantic Coast Line Railway.

Our mill burned in January, 1929, and the mill wasn't put back into operation until September. I don't remember what the volume of business was in 1930 and I don't remember how it compared with other years. All of that moved over the Atlantic Coast Line Railroad. Our extension track was made up of 45 or 50 pound rail.

[fol. 1944] Q. Do you think that would have maintained this heavy train?

A. We were hauling this same load over 25 miles of that same track. (P. 355 B of tes.) We have a fifty-ton main line engine which we will use. It weighs 100,000 pounds. We were going to put on one weighing 333,000 pounds. With a fifty-ton locomotive we can haul twenty of these cars which is our delivery to Hines daily.

Q. Would you have undertaken to risk this light rail for this heavy locomotive?

A. That locomotive would not have come down on the tram road. It would only have come to Alton. We would not have changed our performance.

Q. We would not have used any more on the actual operation and delivery to Alton. We would have used a lighter locomotive for a part of this service. There wasn't any use in using that locomotive in our calculations because the performance would have been the same to Alton that we are doing at Hines now. We would have moved up to Mayo. It was only a mile difference.

Q. Would you have delivered this to Mayo.

A. We would have used it to Mayo.

Q. You said the track between Mayo and Alton wasn't sufficient to withstand it.

A. I said it was in bad shape. We would have had to repaired it.

Q. Have you taken into account that cost?

A. No, sir, we passed it to Alton because the Live Oak, Perry & Gulf was not sufficient to hold the train up to Mayo.

[fol. 1945] Court. Did it or would it have cost any more to deliver it to Alton than it had been delivering it to Hines?

A. Yes, an additional eight mile haul.

By Mr. Adair:

It looked like we did allow 30 cents per thousand feet for the construction of the road, maintenance of it, and the fuel we would have to burn for that additional eight mile haul.

By Mr. Alston:

We did not make any allowance for overhead and taxes. That is handled under the general logging department at the main office.

By Mr. Adair:

We expected to get the log cars to Alston and Mayo by the same movement that is going on now. We did not expect to use a heavier locomotive from the common carrier track over our log track. We expected to bring our track to Alton and Mayo and use a fifty ton locomotive to deliver the cars at that point on the main line to the common carrier. The operation would have been the same that it is now up to that point.

We allowed for that additional eight miles more tram road haul to take care of the cars to Alton and Mayo than we are using in our haul to Hines. Additional railroad construction we figured would have been 20 cents per thousand, maintenance at ten cents per thousand and additional fuel used by the locomotive to deliver at that point at ten cents per thousand. In all, that is forty cents per thousand feet. I think that would have been sufficient had we operated our log train into Mayo instead of Alton.

By the Court:

We contemplated using the same engine. The same one would have delivered to Alton like it is to Hines now. We happened to make this computation because freight rates were going up and we wanted to get it there cheaper. Mr. Wilson directed me a little. There were several plans. I think Mr. Wilson thought of the trackage rights and wanted [fol. 1946] me to get up the data on it.

Recross examination.

By Mr. Alston:

The freight rate on the Alabama coal was $4.10, making a total of $5.60.

C. R. MacPherson, recalled by the defendants, testified as follows:

Recross examination.

By Mr. Alston: (Tes. p. 360B.)

The Georgia Southern & Florida tracks come into Palatka on the other side of town from our mill; I would judge about a mile distant. To get over that mile it would be necessary to come in over the Atlantic Coast Line tracks, or by rafting down the river. The distance by floatation in the river is about a mile. We could not have built a connection through town. We investigated that. We would have had to stand a switching charge, or go to the expense of building a dump, or rafting the logs down to the mill. Yes, the Atlantic Coast Line had that element of benefit to us which the other service did not have.

Redirect examination.

By Mr. Adair:

The Georgia Southern & Florida and L. O., P. & G. would not have had the benefit of the switching charge if we had made the trackage arrangement; I don't know what that switching arrangement was. The reason that our car loads were substantially heavier from time to time during this period was that the mill burned in 1929, and the stock of lumber became badly broken in the shut down, and we had to build up the stock to hold our position in the market. We were faced with the proposition of hauling over the Atlantic Coast Line after this trackage arrangement fell down, or raft the timber along the river and we would have to set up a railroad to run back from the river and all that would have required a large capital outlay. It was a question of building up the stock; business had fallen off. We could have loaded the cars heavier than we did. That loading is done by machinery. What was done during this period involved in this restitution suit with respect to weighing [fol. 1947] the cars was that during the early part of the movement the cars were weighed, but we reached an agreement at the suggestion of the Atlantic Coast Line to save them some time with the switching engine, so that we agreed to work on an estimate weight basis. Once every two

months we would check on the loads. We began on an estimated weight of 58,000 pounds and worked up to a maximum of 68,000 pounds per car; when we stopped shipping it was 65,000 pounds. It was more economical to the railroad to operate on such estimated weight rather than weighing every car; in other words, you could take a 40 car train and run across the scales. Yes, in ordinary single car movements, the car would have to be weighed.

E. W. SCHERER, sworn for the claimants, testified as follows:

Direct examination.

By Mr. Ashby:

My name is E. W. Scherer. I live in Jacksonville, Florida, and I am in charge of the land and timber department of the Brooks-Scanlon Corporation, at Foley, Florida. I have held this position with the Brooks-Scanlon Corporation since 1920. In 1929 and 1930 the Brooks-Scanlon Corporation did deliver cars of logs to the Burton-Swartz Cypress Company at Perry, Florida. They had a log contract with the Burton-Swartz Company to deliver logs from the stump to Perry. They were brought into Carbur, Florida, on the Atlantic Coast Line Railroad by our logging crew and made up into a train and transported under the Burton-Swartz trackage agreement with the Atlantic Coast Line from Carbur, Florida, to Perry, Florida. Yes, we loaded the train in the woods and brought cars over our own log road to Carbur. From that point they were transported over the Atlantic Coast Line to Perry, Florida, under the trackage agreement that existed between the At-
[fol. 1948] lantic Coast Line and the Burton-Swartz Company.

I have made an analysis of the cost of that operation over the Atlantic Coast Line between Carbur and Perry. After the cars are brought up to Carbur, Florida, they were handled by us. We did all the work in connection with delivering the logs from Carbur to Perry. The work that was done by the Burton-Swartz Company at Perry was billed to us. The bookkeeping end of it was down in our office. We were rendered a bill for that work every month. I offer this

statement as Claimants' Exhibit 49-A. The first element of cost on this statement is Train crew labor, $2,905.74. This we were actually charged by the Burton-Swartz Company, representing that cost. The period shown on this exhibit is from September 1, 1929, to January 29, 1930. That period represents the period from the date of the contract requiring the delivery of the logs from Carbur to Perry, and January 29, 1930, represents the day we discontinued that service over the Atlantic Coast Line Railroad. The next item is liability insurance of $17.97; that is the actual disbursement by us. The next item is Engine Repairs and Supplies of $259.27; that represents oil and things necessary to a locomotive. The item Engine Fuel, $1,828.40, was for coal. That is the amount we actually paid the Burton-Swartz Company for operation of that locomotive. Atlantic Coast Line Trackage, $4,567.44, represents trackage paid by the Burton-Swartz Company to the Atlantic Coast Line Railroad for the right to run that log train from Carbur to Perry. (Tes. p. 365B.) Log Cars Repairs Chargeable to Trackage Movement, $932.12, is explained in this manner: log cars were taken to the woods way back from Carbur, in some cases as far as 20 miles, to be loaded, and this figure of $932.12 represents what is a fair division of repairs to the cars as between the damages they sustained from Carbur back into the woods, and from Carbur over the Atlantic Coast Line to Perry. I have apportioned that, allowing 75 [fol. 1949] per cent to the woods end movement and of the 25 per cent to trackage movement. I might add that the heavy damages to the cars is in the woods where they are subject to wreckage and other damages. The cars traveled from ten to twenty miles out in the woods from Carbur. It is 17.58 miles from Carbur to Perry. This other item of Taxes and Insurance and Overhead, $594.35, is a charge of ten per cent of all the items involved in the statement except the Atlantic Coast Line trackage, to cover the taxes, insurance and overhead. I didn't charge overhead on the trackage. According to this statement we made 116 trips; that means 116 round trips of 17.58 miles each way; that is the distance from Carbur to Perry. The number of cars of logs which was hauled is shown to be 3331 cars; that is the actual count. The number of car miles made was 58,559 miles. The average per car cost is obtained by dividing the number of cars of 3331 into the total cost of operating dur-

ing the period, of $11,105.29. This total operating cost of $11,105.29, shown on exhibit 49-A is what I have reference to. That star to the left of the total cost means exclusive of the depreciation on the engine and lumber cars which was the property of the Burton-Swartz Company, and under the log operation that depreciation on the equipment turned over was not a part of the cost. I have included everything except the depreciation of the Burton-Swartz Equipment. 13,063,569 feet of logs were hauled in those 3331 log cars that I refer to. That computation of the number of feet is based on the log scale, the Doyle log scale. On the basis of this number of feet the cost of operating the log train between Carbur and Perry per thousand feet was approximately 85 cents per thousand feet.

The Brooks-Scanlon Company handled another movement with their log train during this period around 1930; [fol. 1950] they had a movement from Scanlon to Foley, Florida. I have prepared a statement for that. I offer this statement as Claimants' Exhibit 50-A. Those logs originated at Scanlon, Florida, on the L. O., P. & G. Railroad, 20 miles west of Perry, consisting of a cypress movement to Perry, and a pine movement to Foley. It is 25 miles from Foley, Florida, to Scanlon, Florida. Claimants' Exhibit 50-A is a computation of the cost of operation of the log train between Scanlon and Foley, Florida, under a trackage agreement between the Brooks-Scanlon Company and the Live Oak, Perry & Gulf Railroad during the year 1930. I have computed the cost of handling the pine into Perry and cypress into Foley. The cypress was delivered by the Brooks-Scanlon Company for the Burton-Swartz Company at Perry under the logging contract I referred to in my previous exhibit, and the pine logs were delivered at Foley for our own operation. The distance of the movement was twenty miles from Scanlon to Perry, and 25 miles from Scanlon to Foley, Florida. Claimants' Exhibit 50-A relates to movements between Scanlon and Foley; the reason I put it that way is because the train on each trip made an entire movement. It continued on to Foley with the pine timber.

I offer in evidence Claimants' Exhibit 51-A, being a contract dated September 2, 1929, between the Live Oak, Perry & Gulf Railroad Company, and the Brooks-Scanlon Corporation, providing for trackage rights to Foley, Florida, and

Perry, Florida. Foley and Perry are close together, about five miles apart. (Tes. p. 370B.) Yes, this contract, Claimants' Exhibit 51-A, provides for the payment of a trackage rate of $1.20 per train mile, of 20 cars or less for the loaded movement; trains of less than 20 cars to be charged for at the same rate as for 20 cars; trains of more than 20 [fol. 1951] cars to be charged for in proportion, to wit, six cents additional for each additional car per mile. That is the trackage agreement which is referred to in my tabulation in Claimants' Exhibit 50-A; and that is the price which was paid, and in making the computations I allowed for that.

Considering Claimants' Exhibit 50-A, the first item of Train Crew Labor, $4,750.26, is the actual labor of the train crew employed in running that train. We had a conductor, fireman, engineer and brakeman on that train, and this amount was actually paid these four. Liability Insurance of $38.48, is an actual disbursement for that purpose. The next item is Engine Repairs and Supplies of $2,780.18. Those are the actual and customary expenses incident to repairs and supplies to locomotive while in that service; those were actualy expenses which were actually paid. Fuel, $5,199.81, was for oil in making trips. On this movement we used crude oil, which the engine used on this movement, which was a number nine oil burning locomotive. The L. O. P. G. Trackage, of $12,887.76, is the trackage we paid to the L. O. P. G. Railroad under the contract which is an exhibit here, I mean Claimants' Exhibit 50-A. The next item is Log Car Repair Chargeable to Trackage Movement, $4,025.77. That as in the former case, is an allocation of the actual log car repairs, twenty-five per cent to the trackage end of it, and seventy-five per cent to the woods end of the haul. I would say we go just as far out in the woods for it, north of Scanlon. From the woods end to Scanlon was between 15 and 20 miles. I have the woods end charged with 75 per cent of the repairs and the trackage end 25 per cent. In other words, our actual log car repairs were four times this amount. That was the amount actually paid by [fol. 1952] our company for the log car movement. I have arbitrarily put that 75 per cent to repairs by movement from Scanlon out in the woods, and 25 per cent to repairs for operating from Scanlon to Perry and Foley. I have done that for the same reason that I made the same allo-

cation in Exhibit 49-A. Locomotive Depreciation, $1,470.73, is the actual depreciation we charged off on locomotive number 9 by performance of this service, based on ten years life. We depreciated that locomotive at ten per cent per year. Log Car Depreciation Chargeable to Trackage, $2,309.61; is 50 per cent of actual depreciation on the log cars. I felt that one-half should be charged to the woods end and one-half to the trackage end of it, because the distance was about equal. I depreciated the log cars on the same basis as the locomotive, on a ten year set up. I have divided that depreciation charged against the log cars into half; I charged half against the movement from the woods to Scanlon over our own log road and half from Scanlon to the Mill. The distance from Scanlon into the woods is about equal to the distance from Scanlon to the mill, but that is subject to variance depending on where the logs are. The next item is Taxes and Overhead, $2,057.48; that is an arbitrary ten per cent covering all items in the statement except trackage. I didn't consider overhead for trackage at all. That gives a total operating cost, according to this statement, of $35,520.08; that includes every element that should be charged against the operation of the log train with one exception; this exception is that we used a portion of the Burton-Swartz Company's log cars, and the cypress logs that we delivered to Perry, or to the Perry mill, were delivered on their log cars. That is on the Burton-Swartz books, and this statement does not cover any depreciation [fol. 1953] of the Burton-Swartz Company log cars. Yes, we made repairs on them. Approximately 3000 car loads in this movement were handled in the cars of the Burton-Swartz Company. The number of cars handled was over 10,000; about 30 per cent of those cars belonged to the Burton-Swartz Corporation. (Tes. p. 375B.) It is right that the item of log car depreciation only relates to approximately 7000 of our own cars. This statement says that we handled 10,183 log cars, and that is right. It shows the number of trips made and the miles per trip; that is the distance between Scanlon and Foley, the maximum distance of operation each time. I showed the average car per trip was 35.5; average cost per trip $123.76; average cost per car $3.49; and the average cost per car mile $.1615. That is correct; it is based on this statement. There were 44,897,117 feet of logs hauled in these 10,183 cars. That

figure represents the actual production of pine logs or log scale of operation. The variation of the figures on actual lumber production and the log scale depends on the scale used. We used the Doyle scale. A thousand feet of pine on the Doyle scale will cut from 1100 feet to 1200 feet of lumber, if carefully manufactured. As shown by Claimants' Exhibit 50-A, the cost per thousand feet is 79 cents per thousand. It is right that the exact figure can be arrived at by dividing the total operating cost as shown on Exhibit 50-A by the number of thousand feet which I testified about. This contract I have produced, Claimants' Exhibit 51-A, covers the movement of operation of log train which I testified about, and which I made the computation in Exhibit 50-A to show. Without reading it again, I would say that it is [fol. 1954] applicable on all points on the L. O., P. & G.

"Q. That was pine and cypress logs that were handled in these trains which are shown by this Exhibit 50-A and 49-A?"

"A. We included a very small quantity of hardwood logs that was delivered to the Wilson Lumber Company at Perry. The movement might be called purely a pine and cypress movement."

Cross-examination.

By Mr. Alston:

"Q. You have an item of taxes and overhead; what is included in the overhead?"

"A. We added ten percent to take care of overhead such as office expense, bookkeeping, supervision, stenographers and so forth. We intended to cover those items by adding an arbitrary ten per cent."

"Q. There are a good many contingencies in this contract in which the lumber company agreed to hold the Railroad Company harmless for damages sustained by any person, or persons, caused by accident and so forth?"

"A. Yes, sir."

"Q. Any provision set up for those things?"

"A. We had no major damages or accidents. About the worst thing we did was to kill a hog or a cow down there."

Dedirect examination.

By Mr. Ashby:

I was asked if we included anything for overhead; I had already testified that we included overhead on every item here except the trackage amount paid out for trackage. I did not include overhead for trackage because that was under an agreement with the railroad. That overhead, figured with the taxes and insurance, was ten per cent of all those other items.

[fol. 1955] J. S. Foley, being sworn for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is J. S. Foley. I reside in Jacksonville, Florida, but my business address is Foley, Florida. I am President of the Brooks-Scanlon Corporation, and have been President of the corporation since the latter part of October, 1930. Prior to that I was Vice-President and General Manager, which office I held from 1920. I had been connected with the actual operation of the company before that time, but not this same plant. Our mill is now located at Foley, Florida. The capacity of that mill is eighty million a year. When I was first connected with the plant in 1920 the mill was located at Eastport, Florida. I succeeded Fleishel in the management of the company. The Mr. Scanlon who testified in the proceeding at a former time was president of the company, but he died in October, 1930. At Eastport we were cutting a hundred million feet. The mill was built in the latter part of 1914. We built one mill there in 1923. We moved the mill. We began in February, 1929, moving the mill to Foley, Florida. We dismantled and moved because we were operating under a contract to haul logs over the Atlantic Coast Line and the rates were advanced 120%, which would amount to confiscating our property, and we couldn't stand it. It was increased from the Cummer scale; it was increased 120%. (Tes. p. 380.) Yes, that was made by an order of the Interstate Commerce Commission,

Docket 18364. We had been operating our mill up to the time that this order went into effect; we tried to finish before it went into effect. We had a few trains after that time. We have a small claim in the restitution proceedings. We operated approximately nine trains every week over the Atlantic Coast Line Railroad under the Cummer scale during the period of operation and preceding the time the Interstate Commerce Commission's order went into effect. [fol. 1956] We operated one train one day and two trains the next day. There were from 42 to 46 cars per train. In 1928 we were hauling some timber from Perry, approximately 160 miles from Perry to Eastport. From Carbur it was 143 miles.

"Q. What was your investment in this plant at the time you tore it down?"

(Objection by Mr. Alston.)

"A. $1,770,461.49."

I have figured on what it cost us to move the plant and discontinue operations and move to the woods. We had a $3,244,000 loss. The first item of $1,497,119.90 is the value of our plant at that time, less the machinery we took out, and the freight on that material from Eastport to Foley of $27,537.41. That first item totals $1,497,119.90. The next item is taxes paid on land and timber while we were idle of $144,000.00. One and a fourth years interest on the timber investment while we were idle of $450,000.00. Overhead while we had no production in shipment and no movements and while we were preparing to do business, of $181,000.00. There was the Eastport mill site and town site residue of $347,000.00 and is still there. The loss of rent from the Eastport town site during the balance of life, based on timber we owned, of $625,000.00 making a total of $3,244,000.00. I had made an estimate during the pendency of the litigation before we had to move of what the thing was going to cost us if we had to move as a result of the raising of the rates; this was before the order of the Intersttae Commerce Commission was entered. I don't remember what I then estimated it would cost us to move, but our cost exceeded the estimated by about something over $200,000.00. Our mill at Eastport was a pine mill; [fol. 1957] the Atlantic Coast Line hauled all of our logs

into Eastport from Perry and Carbur, Florida. The population of the town in Eastport on that day in February when we started to wreck that mill was pretty close to 5,000 people residing there permanently. That was a few days after the order of the Interstate Commerce Commission became effective; as soon as we finished cutting the last log. We still own that place at Eastport; the Brooks Scanlon Corporation owns the houses in which the 5,000 people lived. We still own the land on which the houses stand. About 35 or 40 people now reside in that town; about 16 homes are still renting. We had, uncut, in February, 1929, approximately one billion feet of timber in our Carbur and Perry tracts. The capacity of the mill we had there set up, the Foley mill, would cut out in about 12 years. We would not have moved to the woods if this local rate had not been changed by the Interstate Commerce Commission. We would have expected to keep cutting; we had already made additional investment there. Operating in the woods is more economical for a close supervision of the logging end, which is one of the items of cost. You have got a better control of it. Yes, we would have kept it at Eastport if this rate had not been increased. We had our log roads in the woods in the Perry timber and Carbur timber at the time we were operating our trains over the Atlantic Coast Line Railroad under the Cummer scale, a log road out from Carbur and Scanlon.

The officials of the Atlantic Coast Line Railroad with whom I talked before the Georgia Commission filed suit were Davis and Delano; I talked to them before we bought additional timber west of Perry. At no time before this suit was instituted by the Georgia Public Service Commission did any of them complain of the level of the Cummer scale. I never have heard either Davis or Delano say it [fol. 1958] was a profitable or unprofitable operation. There was never an attempt on the part of the Railroad Company of their own accord to advance this rate during the period of our operation under it prior to the Georgia Public Service Commission proceedings. The rates went up during the general rise, duirng the war, and then went down. They went up on this horizontal increase in 1918 and 1920, and came back down in 1922. That affected all freight rates; that was general. (Tes. p. 386.)

I heard Scherer testify to-day, and he produced a contract or trackage agreement between the Brooks-Scanlon Corporation and the Live Oak, Perry & Gulf Railroad of six cents per car mile for a load of logs, or loaded car, with a return of the empties free. Since I was connected with the Live Oak, Perry & Gulf Railroad they had a contract with the Standard Oil Company of a six cents basis. That has been a standing basis of that road for trackage. I don't think they had any other contract but the Brooks-Scanlon Company and the Standard Oil Company. Those are the only ones since I have been connected with the Railroad. All of our movement- of logs were in train load quantities. There was no switching service performed at the point of origin. We made up the train complete, and the Atlantic Coast Line took it. The only switching service at the point of destination was from there to the plant, if you call it that. They delivered the logs to Eastport, and assisted us sometimes. I don't think they made any cutting but once in a while. We did the switching ourselves.

I have the tabulation of the number of cars and the amount we paid the Atlantic Coast Line, the one I used in a former hearing. It shows complete movements from 1915; here it is. (Producing the paper and reading from it:)

[fol. 1959]

1915	No. of cars	4,891,	freight paid	$62,920.00
1916	No. of cars	9,906,	freight paid	147,805.92
1917	No. of cars	9,352,	freight paid	140,555.56
1918	No. of cars	8,341,	freight paid	133,042.74
1919	No. of cars	7,900,	freight piad	131,423.04
1920	No. of cars	8,810,	freight paid	168,253.87
1921	No. of cars	7,580,	freight paid	173,801.53
1922	No. of cars	12,013,	freight paid	254,900.50
1923	No. of cars	12,613,	freight paid	254,481.24
1924	No. of cars	15,088,	freight paid	315,470.73
1925	No. of cars	16,017,	freight paid	331,549.71
1926	No. of cars	15,652,	freight paid	334,048.47
1927	No. of cars	15,889,	freight paid	330,608.29
1928	No. of cars	17,053,	freight paid	353,136.00
1929	No. of cars	2,140,	freight paid	50,954.66

There was a total of 163,245 cars and a total amount of freight paid of $3,182,952.26. That covers from 1915 to

1928 inclusive, and up until the 9th of February, 1929, a little over a month.

Cross-examination.

By Mr. Alston:

I haven't got a record of all the feet we shipped during the years 1927, 1928 and 1929 with me. Yes, in 1926 we shipped 15,652 cars with a total of 94,329,555 feet. The cars shipped in 1928 and 1929 remained fairly even with what we shipped in 1926, about 5400 feet to the car. Taking the figures from Exhibit Number 42, offered in the original hearing before the Interstate Commerce Commis-
[fol. 1960] sion, through 1926 we had shipped 700,640,035 feet. 1927 and 1928 would run about 200 million more. At the time we stopped shipping we had really shipped something in excess of 900,620,000 feet; 668,000,000 feet up to September, 1926; about 907,000,000 feet total. The contract did not carry with it a limitation of a billion feet; the contract said approximately a billion feet. I don't think there was a provision in the renewal contract as to the billion feet limitation; we had this additional purchase which was over half a billion feet under that contract. Our company and the Atlantic Coast Line Railroad had an arrangement in 1928 or 1929 about the Live Oak, Perry & Gulf Railroad; I think the date of that was the 29th of December, 1928. In the Exhibit 43, which was offered at the hearing before the Interstate Commerce Commission, it is stated that the investment to August 31, 1926, at Eastport, Florida, was $2,237,926.91. (Tes. p. 390.) The estimate just now as to the cost of our movement was something over three million dollars. This included real estate and everything we had there; I don't know what this is made up from. Yes, this is supposed to be a copy.

$1,497,119.14 was the value of the plant at Eastport. The interest on timber while we were idle was $454,000.00, and taxes paid on the timber while idle was $144,000.00; overhead while no production shipment, $181,000.00. The Eastport real estate, which included the town site and sewage and water and everything, $347,000.00, and the loss on rentals which would have accrued during the balance of life at $625,000.00, making a total of $3,244,000.00. We had an income from rent of $62,000.00 a year. That is what

we would have received on a ten year period for the balance of life had we continued and it would have taken ten [fol. 1961] years to complete this cutting at Eastport. The result was we lost the town site. It is true that it is an advanage to locate the mill at the timber if you could build originally in the timber, but not suffer a two million dollar loss in moving. Yes, the advantage is there whether you build there or not, or whether you move there or not, if that could be done without loss in movement. If you could build there originally it is better. If we had known 15 years ago what we know today we would have built in the woods. I testified at the other hearing that we had in this western location, the western part of Florida, something over a billion feet uncut in 1929. I reckon it is about right that our average freight bill over the Atlantic Coast Line for the ten year period was about $236,000.00. Yes, that item on freight was eliminated when we moved.

Redirect examination.

By Mr. Adair:

There was an increase in the rate; it went up 25% twice; I don't remember the time, but it went up two or three times and then came down and when we finished it was still higher than $12.00 a car. When I speak of $12.00 per car rate I mean transportation charges of $12.00 per car under the published rate at the time this contract was made in 1914. We did not make any claim against the Atlantic Coast Line during the time I was in charge of that business; they gave us good service. The original contract provided for approximately a billion feet to be moved over the Atlantic Coast Line, and about half a billion feet in addition was put under that contract by stipulation. We had a letter in connection with the subject. My recollection [fol. 1962] is that it was in 1923. We went to the Atlantic Coast Line before we closed the purchase of the timber. We wanted to know if we could get it into Eastport under the terms of the contract; if we could not, we would not purchase it. I think that was in the former hearing. I think we have a letter from Delano and a letter from Walker. This additional half a million feet was brought under that contract. Emphatically, we would not have wrecked our mill at Eastport, wrecked our town at East-

port, and moved our town and mill to the woods at this great loss, nor would we have moved at all, had this order of the Interstate Commerce Commission not been entered.

Recross examination.

By Mr. Alston:

I am sorry that I can't give you the information of how much of our investment at Eastport had been charged off by 1929, when we moved, but it was by the thousand feet of timber that we had to cut that we owned; it was by the thousand feet that we depreciated the plant. I do not remember the rate; however, a sawmill plant is depreciated from the time it begins because its life is fixed. No, we did not actually save more than five per cent in this removal; we lost because we had to do what we could have done at Eastport. If we had not had a cash reserve we would have been in bankruptcy. This claim here for machinery in this statement at Eastport and transported over to Foley, Florida, is the value that we set up in the tax return. That is the amount we had allowed against the plant for depreciation in a schedule or account for income taxes. The whole thing was a loss to us because we lost more money than if we had built a new mill. In my previous testimony I stated: "We have gone into the matter and have determined or at least attempted to determine that it is our best interest to have a location which may be served by [fol. 1963] two or more railroads, and we do not desire in the future to place ourselves in the same predicament we are now confronted with." That still holds good, I think, on account of the predicament we got in.

Arthur G. Cummer, sworn for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is Arthur G. Cummer. I reside in Jacksonville, Florida, (Tes. p. 395) and have resided there since 1896. I am President of the Cummer Cypress Company, and have been President since 1909. They commenced oper-

ation in 1909 near Cedar Key, Florida. The Cummer Lumber Company made a contract in 1903 with the railroad for the transportation of logs. The Cummer interests, my father and my family, owned and operated the Cummer Lumber Company at that time. That Company owned and milled yellow pine; the plant was at Milldale, on the St. Johns River, adjoining Jacksonville. The Cummer Lumber Company commenced operation in 1897, and operated until it cut out all the timber in 1918. The Cummer Cypress Company was organized in 1909; that cut Cypress timber alone. Its operation was down near Cedar Key, Florida, near Otter Creek. Otter Creek is about 20 miles from Cedar Key.

We completed our yellow pine operation about November, 1918. That was cut entirely at the Milldale plant. The capacity of the plant was about 36 million feet a year. In 1918 we leased all the plant but the box factory. The rental was $60,000 a year. The Putnam Lumber Company had the lease to run for eight years with the privilege of renewal for two years. They leased the sawmill plant until the fall of 1926.

(Objection by Mr. Alston.)

In 1920 we had negotiations with the Denkmann Lumber Company composed of Louisiana people in connection with [fol. 1964] the lease of our plant and site at Milldale. We practically agreed on the details and were ready for signature for the sale of the plant at $300,000.00 and a rental over a number of years at about thirty or thirty-five thousand dollars, an annual term lease for 24 years. The lease was not consummated.

(Objection by Mr. Alston.)

About that time the Georgia Public Service Commission brought an attack on the log rates. The Denkmann people were to draw the logs to this mill site from Dixie County. Denkmann was going to lease our mill site and was trying to purchase the mill from the Putnam Company. We were going to repair the mill and put it in operation for 24 years. They were going to operate it for 24 years. It blew up on account of the log rate. They were not willing to pay more than the Cummer scale for the transportation of the logs. When the transaction blew up, the Putnam Lumber Company notified us they would not extend the lease, but by

mutual consent we permitted them to remain there until they could build their mill in the woods. They moved out in the fall of 1927. We junked the property at Milldale; the salvage value was $54,157.43. At that time we were carrying that property on the books of the Cummer Lumber Company, including the mill site, at $1,250,000.00. The Federal Government, or the income tax board, decided that the salvage value of the real estate was $115,800.00. The total valuation at the time it was junked was $169,957.43. The total aggregate consideration we were to receive under the Denkmann arrangement was $300,000.00, and a rental of $936,000.00, making a total of $1,236,000.00. (Tes. p. 400.) We built the plant at Lacoochee, Florida, in 1923. We had four groups of timber in that vicinity; one large group [fol. 1965] south of Lacoochee. We had some scattered near Otter Creek, and one on the Lacoochee River. We located the sawmill plant at Lacoochee in order to be in reasonable reach of the outlying groups. We commenced to operate there in 1923. We first commenced cutting timber from Otter Creek; we moved it over the tracks of the Atlantic Coast Line Railroad in trainload lots. We operated under that arrangement until we cut the timber at Otter Creek. We next commenced at Homosassa, Florida. We completed the Otto Creek cutting along in the fall of 1928. In August of 1928, the order of the Interstate Commerce Commission was entered.

In January, 1929, our company entered into another service contract for the transportation of logs in trainload quantities from Homosassa to Lacoochee, Florida. We knew that the order of the Interstate Commerce Commission had been entered at that time. Our company had been in that litigation before the Interstate Commerce Commission. It was busy litigating with the United States and the Georgia Public Service Commission in that proceeding. We entered into this contract at that particular time because we felt sure that we would win the case. We felt that there was no question but that the reasonable rate would be sustained. That contract was made after the first opinion came down, about the time of the first opinion limiting this order to North Florida. It was before the second decision. Our cypress timber at Homosassa had been girdled. When cypress timber is girdled it does not improve. After the tree dies it is very necessary to get it

into lumber as soon as you can; if you don't it will deteriorate. It has to be girdled in the fall and winter when the sap is down to get quick results. We girdled that in the fall of 1928. As soon as the leaves drop off the tree you better cut it. We don't have over a year girdled in advance. When we completed the girdling at Homosassa in January, 1930, for a short time, until we could get a new [fol. 1965a] location started, we operated from the main group south of Lacoochee, and then we had a trackage arrangement with the Seaboard Air Line, and with our main line spur track we hauled logs into Lacoochee over the Seaboard. Our timber could have been moved over the Atlantic Coast Line Railroad. We did not move it over the Atlantic Coast Line because we couldn't afford to pay the new freight rate. Our so-called transportation cost for logs is less than the so-called I. C. C. scale. It is less than the Cummer scale. Our present cost of getting logs from the woods to mill is less than it was under the Cummer scale. We transported them twelve miles over our line and about 19.16 miles over the Seaboard. We paid the rate for our trackage rate arrangement with the Seaboard.

I think I can clarify the situation about the amount of lumber that had been sold in the summer of 1929 and 1930 and 1931. The shipment from Lacoochee in 1929 was 17,600,000 feet, and 9,500,000 feet was shipped the first six months; that was our normal production for that period. In 1930 we shipped 14,700,000 feet. In 1931 we shipped 10,000,00 feet, and in 1932 it was 6,200,000 feet.

Cross-examination.

By Mr. Alston:

Yes, I was on the stand in June. On page 1152 of that record I did say: "We now have nothing left at Milldale but the bare land. The decision of the Interstate Commerce Commission in the Log Rate Case caused us to lose not only the sale of our manufacturing plants and the lease of our mill site, but threw a great number of men out of employment." The thing that cost us the sale with the Denkmann Company was the Interstate Commerce Commission's decision. I don't know of such a company as the Putnam Cypress Company; there is a Cummer Lumber [fol. 1966] Company and the Cummer Cypress Company.

(Tes. p. 405). I am interested in both companies; I identify myself in the matters of the Cummer Cypress Company and the Cummer Lumber Company too. The Cummer Lumber Company was not manufacturing lumber in 1929. The Cummer Cypress Company was, and was manufacturing it at Lacoochee, and had been manufacturing it for some time, since 1923. Besides that mill we had a little box plant at Otter Creek. We located our sawmill plant at Lacoochee before there was a dispute over the rates. When we located it there we figured with the Atlantic Coast Line Railroad and found we were beyond the range that would permit us to bring it into this mill down here. We went out to that plant 180 miles from Jacksonville. The Cummer scale went to 170 miles, but it couldn't get us in. At Lacoochee, Florida, we got lumber from adjacent holdings over our spur tracks. I think we hauled about ten or fifteen miles from the mill over our spur track. I suppose we have 250 million feet there. We are about through at Otter Creek; we are through with Homosassa too. Some of the land of the Cummer Cypress Company lay at Lacoochee and Lacoochee River. The mill on the Lacoochee River is about 32 miles away. We got to them over the Seaboard and our log railroad. We hauled a distance of 19.69 miles over the Seaboard, and 12.97 miles on our main line, making a total of 32.66 miles in all. I think we did reveal to the Interstate Commerce Commission in 1930 all the facts I am giving now, including the amount of money we paid out for rates for hauling. We started with seventy-five million feet of timber at the new location. We have been cutting on it. I presume we have about 45 million feet left.

[fol. 1966a] T. M. True, recalled by the claimants, testified as follows:

Redirect examination.

By Mr. Ashby:

Yesterday I testified with respect to the Atlantic Coast Line Tariff, I. C. C. # B-2183. That was Exhibit 27-A of Claimant, I think, which showed rates between various points in Florida on the Atlantic Coast Line in cents per

thousand. I have traced back the history of those rates shown in that tariff. Those rates, with some minor exceptions, have been in effect since January 25, 1914, in the Atlantic Coast Line Railroad Freight Tariff 3116, which was subsequently filed with the Interstate Commerce Commission under I. C. C. 387. They are the same rates subjected to the horizontal increase in 1918 and 1920, reduced ten per cent in July 1, 1922. The I. C. C. B-387 was first effective January 25, 1914.

JOHN ROWLAND, sworn for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is John Rowland. I am Secretary and Assistant Treasurer of the Wilson Lumber Company, at Perry, Florida. I reside at Perry, Florida. The Wilson Lumber Company and the Wilson Cypress Company are not the same; they have no connection whatever. The Wilson Lumber Company operates a hardwood mill at Perry. That is the same Wilson Company in this litigation about which I now testify. I have been with the Wilson Lumber Company continuously since the spring of 1928. I was with them during the period of this high rate under the order of the Interstate Commerce Commission. We have done some operation since the new order of the Interstate Commerce Commission went into effect February, 1933. [fol. 1967] We stopped shipping logs on the Atlantic Coast Line. There were a few cars out that did not get in before the order went into effect. We stopped because the rate was too high. We are transporting logs by truck, some from Clara, Florida, and some from Carbur, Florida. Clara is 27 miles from Perry. We give $2.00 per thousand for transporting them from there. (Tes., p. 410 B.) We pay $2.00 per thousand from Carbur, Florida. The new rate of the Interstate Commerce Commission from Carbur is three cents per hundred pounds or $3.60 per thousand; from Clara it is 4½ cents per hundred pounds, or $4.20 per

thousand. This is on the basis of twelve pounds to the foot. That was for hardwood logs. The Cummer scale from Carbur and Clara would be $2.05 per thousand feet. At the time the Interstate Commerce Commission's order went into effect, the first one, we were drawing logs anywhere from a distance of 170 miles on the Atlantic Coast Line to Perry, Florida. When this order of the Interstate Commerce Commission first went into effect in 1929 we continued to get logs over the Atlantic Coast Line. We did not consider it a reasonable rate, but we continued to haul over the Atlantic Coast Line Railroad because we had a contract with Graham-Page and Company, and we had to fill our contract. We would not keep moving logs under any scale of rates very much higher than the Cummer scale; we could not do it. It is about 120 per cent cheaper to bring logs in on a truck than on the Atlantic Coast Line Railroad at the Interstate Commerce Commission's rate for Florida transportation. The whole distance of 170 miles is not that much, but I haven't figured out how far. When I say it would be cheaper to transport them by trucks than by the Atlantic Coast Line Railroad under the [fol. 1968] Interstate Commerce Commission's rate I mean generally.

"Q. What have you to say, Mr. Rowland, with respect to the level of the scale prescribed by the Interstate Commerce Commission's unlawful order that was set aside by the Supreme Court of the United States? State whether or not you consider the rate so prescribed by that order to have been a reasonable rate for the transportation of logs during the time when that order was in effect?"

(Objection by Mr. Alston as irrelevant and immaterial.)

"A. It was unreasonable."

"Q. Could you manufacture lumber under that rate in normal times?"

"A. It would be abnormal for the price of hardwood."

"Q. Could you pay that rate and manufacture and sell hardwood lumber?"

"A. No, sir."

(Objection by Mr. Alston.)

Cross-examination.

By Mr. Alston:

Our mill has not been making lumber for the last 30 days on account of high water. It is not on account of the high rate. We were getting logs from those places 27 and 18 miles; some from there and other places too, out from Perry. We get logs from Clara from land we bought stumpage on. We haul logs from Carbur, Florida, to the mill, about 10 miles from the logs. They are brought into Carbur on trucks. We don't unload at Carbur; we prefer to haul them in for $2.00. They are loaded on trucks in the forest and moved ten miles to Carbur; that is the nearest point to the Atlantic Coast Line. They keep on down to our mill 18 miles further. The ones we get at Clara, Florida, are carried by truck. They are brought six to ten miles by [fol. 1969] truck before they get to Clara. After the high rate went into effect they continue on to our mill in the trucks in which they were loaded. Before that they came out to Clara. We are running at full capacity on other logs. We are not getting them over the Atlantic Coast Line. We could use the logs we are getting off the other road, we could use them at our mill at the rate they charge. We buy them delivered. Most of the logs that come on the L. O., P. & G. Railroad come from Brooks-Scanlon Company. (Tes., p. 415.) Our company owns several small tracts. We have some in Jefferson County up around Griffin, Florida. We have about 15 million feet of timber out from Carbur.

"Q: All you said about the rates and conditions, you said it before the Interstate Commerce Commission in a hearing in November last?"

"A. I don't remember all the questions."

"Q. You weren't asked any more questions here than you were at that time?"

"A. I don't think so; no, sir."

Redirect examination.

By Mr. Adair:

We pay this $2.00 per thousand for transporting the logs from Carbur to Clara, Florida, to the man who brings the

logs in. The logs are picked up in the woods and carried on the same truck to the mill. It costs that much additional from what we have been paying to bring them into Carbur. What we pay to have them brought to Carbur depends upon the size and species. If it is hardwood, we have about 22 species. Until the high rate went into effect they were loaded on the Atlantic Coast Line at Carbur, under the Cummer scale. After the Cummer scale went out we paid [fol. 1970] $2.00 extra to get them hauled in; we add $2.00 additional to carry it on after we get to Carbur. We get the logs over the L. O., P & G. Railroad from Brooks-Scanlon. They are shipped here under a trackage agreement I suppose. They sell them to us at a delivered price.

Recross-examination.

By Mr. Alston:

I don't know what rate the shipments from Brooks-Scanlon bear. In the past we had shipments at Lacoochee and Homosassa, Florida; at that time they came on the Atlantic Coast Line Railroad. They are not shipping any from there at this time.

Offers in Evidence

Thereupon Claimant's Exhibit 52-A was offered in evidence, it being an agreement dated October 31st, 1913, between Dill-Cramer-Truitt Corporation and Atlantic Coast Line Railroad Company provides a trainload rate, two train loads per week, of between 35 and 40 cars per train, between points at or near Dixon and Verona, North Carolina, and Suffolk, Virginia. The distance from Dixon to Suffolk is 258 miles and the distance from Verona to Suffolk is 263.5 miles. The rate is $4.75 per thousand feet, car load minimum 4,000 feet, excess in proportion. The contract contemplates the moving of not less than 100,000,000 and not more than 150,000,000 feet of logs. It provides for the shipment of the outbound lumber over the Atlantic Coast Line Railroad, provided the rates on competing carriers are not lower than the Atlantic Coast Line rates.

Claimant's exhibit 53-A offered in evidence. Contract [fol. 1971] dated June 28, 1913, between Atlantic Coast Line Railroad and Overstreet Crate Company, provides for trackage rights over lines of railroad aggregating 19.3 miles. It provides for the payment of $1.50 per thousand feet of logs, minimum load 2,000 feet per car per train, excess in proportion. It also provides that the railroad company will pay to the lumber company 33½ per cent of the gross revenue derived from hauling the logs. It also provides for the shipment of outbound lumber over the railroad, provided the rates of competing railroads are not lower. It further provides for a bond of $10,000 for the carrying out of the contract. A supplement, dated January 31, 1914, to this contract, extends the distance over which the log trains may move to an aggregate of 40.87 miles. A second supplement, dated February 1, 1915, to this contract fixes an aggregate distance of 37.9 miles of track over which the trains may operate, and continues the rate of $1.50 per thousand feet, but lowers the required minimum load in each car to 1900 feet and provides that the railroad company will pay to the lumber company 45% of the gross revenue derived from the operation of the trains in hauling logs, rail and ties. The contract may be terminated by 60 days' written notice. A further supplement to this contract, dated December 16, 1916, fixes the distance over which the log trains may operate at 39.9 miles without otherwise altering the contract.

Claimant's Exhibit 54-A offered in evidence. This contract, dated December 8, 1915, between Atlantic Coast Line Railroad and Conway Lumber Company provides for trackage rights for the lumber company between Aynor, South Carolina, and Conway, South Carolina, a distance [fol. 1972] of 16 miles. It provides for a daily train of not less than 6 cars, with a minimum load on logging cars of 1900 feet, and on ordinary flat cars of 3500 feet. It provides for the payment of $1.75 per thousand feet, but also provides that the railroad company will pay to the lumber company 50% of the gross revenue derived from the operation of the trains in hauling said logs. The contract provides for a bond of $10,000, and can be terminated after one year on 60 days' notice.

Claimant's exhibit 55-A offered in evidence. This contract, dated December 15, 1916, between Eureka Lumber Company and Atlantic Coast Line Railroad Company, pro-

vides a trainload rate between Whorton, North Carolina, and Washington, North Carolina, a distance of 5.1. It provides for two trainloads of 30 cars each per week, with a minimum of 1900 feet per car. The lumber company agrees to pay (Tes. p. 420) $1.50 per thousand feet of logs. It likewise agrees to ship the outbound lumber over the railroad, provided the rates of competing carriers are not lower. The contract provides that after one year it may be terminated on thirty days' notice.

Claimant's exhibit 56-A offered in evidence. This contract, dated July 1, 1908, between Atlantic Coast Line Railroad Company and Jackson Brothers Company, provides a trainload rate on not less than 150,000,000 feet of logs from certain points just out of Parkton, North Carolina, to Whaleyville, Virginia. The shortest distance is from Buie, North Carolina, to Whaleyville, a distance of 201 miles. Other points from which shipments are to be made are slightly further. It provides for the shipment of not less than 600,000 feet, nor more than 750,000 feet per week, carload minimum 5,000 feet, excess to be charged for in [fol. 1973] proportion. The rate provided is $3.80 per thousand feet. It likewise provides a rate of 2 cents per hundred pounds on the outbound lumber from Whaleyville, Virginia, to Pinners Point, Virginia. A supplement to this agreement, dated January 17, 1917, provides that not less than 400,000 feet, nor more than 750,000 feet shall be shipped per week. This likewise raises the rate on the outbound lumber between the points mentioned to three cents per hundred pounds. A supplement to this contract, dated July 1, 1920, terminates the contract.

Claimant's Exhibit #57-A offered in evidence. This agreement, dated July 15, 1918, between Atlantic Coast Line Railroad Company and Giles Ray Lumber Company, provides for trackage rights for the operation of log trains from Robins Neck, South Carolina, to Florence, South Carolina, a distance of 22.8 miles. This provides for a charge of $30.00 per train of 25 cars, excess cars in proportion. It provides for the shipment of the outbound lumber over the railroad provided rates on competing carriers are not lower. It also provides for a bond of $10,000 given by the lumber company, and the contract may be terminated after two years upon 60 days' notice in writing.

Claimant's Exhibit #58-A offered in evidence. This contract, dated December 22, 1921, between Atlantic Coast Line Railroad Company and Enterprise Whiteville Lumber Company, provides for trackage rights for the lumber company between Bowden and Enterprise Siding in North Carolina, a distance of 9 miles. It provides a trackage rate of $16.00 per train of 20 cars or less, and 80 cents additional for each additonal car. The lumber company agrees to ship the outbound lumber over the railroad, provided the rates on competing carriers are not lower. It provides for a bond in the sum of $10,000, and likewise provides [fol. 1974] that after three years the contract may be terminated on 60 days' notice in writing. Letter dated January 12, 1923, permits the lumber company to haul rough lumber on these log trains between the same points for the Rowland Lumber Company.

Claimant's exhibit #59-A offered in evidence. This contract, dated January 9, 1925, between the Atlantic Coast Line Railroad Company and Montgomery Lumber Company, provides for trackage rights for the operation of logging trains between Barhams and Spring Hope, North Carolina, a distance of 19.3 miles. It provides a rate of $1.41 per mile per train of 20 cars, additional cars to be charged for in proportion. The lumber company agrees to ship its outbound lumber over the railroad, provided the rates of competing carriers are not lower. The contract provides for a bond of $10,000, and is to remain in force for 5 years and thereafter may be terminated on 90 days' notice.

Claimant's Exhibit #60-A offered in evidence. This contract, dated July 24, 1928, between Atlantic Coast Line Railroad Company and Brooklyn Cooperage Company, provides for trackage rights for the operation of log trains of the lumber company from Greeleyville to Sumter, South Carolina, a distance of 32.4 miles, and from Ramini to Sumter, South Carolina, a distance of 19.5 miles. It provides a rate of $35.00 per train of 20 cars from Greeleyville and $30.00 per train of 20 cars from Remini, excess in proportion. The lumber company agrees to ship its outbound lumber over the railroad, provided the rates of competing carriers are not lower. The contract provides for a bond of $20,000 and likewise is to continue in force [fol. 1975] for five years, and thereafter may be terminated on 12 months' notice in writing.

Claimant's Exhibit #61-A offered in evidence. This agreement dated December 29, 1928, between Atlantic Coast Line Railroad and Live Oak, Perry and Gulf Railroad, provides for the routing of traffic controlled by the Live Oak by way of the Coast Line and provides that the Coast Line will give to the Live Oak trackage rights into Perry over any part of the Wilcox-Perry line for the movement of logs in trainload lots upon terms and conditions no less favorable than those granted to the Brooks-Scanlon Corporation by contract of even date therewith.

Claimant's Exhibit #62-A offered in evidence. This contract, dated December 15, 1931, between Atlantic Coast Line Railroad and United States Sugar Corporation provides for trackage rights for the Sugar Corporation over the lines of the railroad between Palmdale, Florida, and the west bank of Miami Canal, a distance of 42.1 miles. It provides for a minimum of 22 tons of sugar cane per car and 15 cars per train. It provides for the shipment of the outbound sugar and molasses over the Atlantic Coast Line, provided rates on competing carriers are not lower. It provides for a bond of $20,000 and that the contract shall continue in effect until July 31, 1932. The rates provided by the contract are as follows:

For not over 5 miles 9 cents per ton.
Over 5 and not over 10 miles, 12 cents per ton.
Over 10 and not over 15 miles, 16 cents per ton.
Over 15 and not over 20 miles, 19 cents per ton.
Over 20 and not over 25 miles, 22 cents per ton.
Over 25 and not over 30 miles, 22 cents per ton.
Over 30 and not over 35 miles, 24 cents per ton.
Over 35 and not over 40 miles, 25 cents per ton.

[fol. 1976] Claimant's Exhibit #63-A offered in evidence. This is a letter dated January 18, 1926, directed by S. A. Stoddard, General Superintendent of Transportation of the Atlantic Coast Line Railroad Company, to Mr. C. E. Brower, G. S. T., A. B. & A., Atlanta, Georgia, and to others, referring to reciprocal rental rates and instructions covering equipment rented as between railroads effective January 1, 1926, and copy of schedule of retail rates and regulations referred to in said letter.

Claimant's Exhibit #64-A offered in evidence. This is an agreement, dated July 31, 1924, between the Atlantic

Coast Line and Brooks-Scanlon Corporation, providing for the rental of 75 steel flat cars, and it provides further that the Lumber Company shall maintain the cars, that is, keep them in repair.

Claimant's Exhibit #65-A offered in evidence. It is an excerpt, certified by the Secretary of the Interstate Commerce Commission, from the Louisville and Nashville Railroad Company's local and joint freight tariff of charges, rules and regulations applicable at points on the Louisville and Nashville Railroad Company. This contains item 170, File 336774, covering the operation of logging trains.

"Mr. Alston: We object to Claimant's Exhibit #52-A because the date of October 31, 1913, concerns trainload rates in another part of the country and at (Tes. p. 425) another time, and the rates involved here are not trainload rates, they are carload rates; and we further object because the time under which this contract is made is very different from the time and conditions which were in existence in the period under inquiry, to wit, February 8, 1929, to March, [fol. 1977] 1931. We object further because the unreasonableness of the Cummer scale has been established, and the reasonableness of the Interstate scale is now an adjudicated fact, in a proceeding to which all the party claimants were parties to the litigation."

Same objection made to Claimant's Exhibits 53-A, 54-A, 55-A, 56-A, 57-A, 58-A, 59-A, 60-A and 61-A. Additional objection to Claimants' Exhibits 52-A, 53-A, 54-A, 55-A, 57-A, 58-A, 59-A, 60-A and 61-A because there is a consideration of a transit arrangement, that is, shipment of outbound manufactured products over the lines of the Railroad Company.

"We object to Claimants' Exhibit 62-A, which is a contract between the Atlantic Coast Line Railroad Company and the United States Sugar Corporation for trackage rights, for the reason that it involves a consideration of outbound movement over the Atlantic Coast Line Railroad, and binds the Sugar Company to provide this right to the Atlantic Coast Line, and we object further because the subject matter is very different from that involved in the case at bar, and as well as for other reasons that have been heretofore set out. We object to Claimants' Exhibit 63-A for the reason it is irrelevant and immaterial. It purports

to be a reciprocal rental arrangement, and no provision is made for such rental in this case at bar, and for other reasons which have been made. This Cummer scale rate has been adjudged unreasonable, and the Interstate Commerce Commission rate has been adjudicated and determined to be a reasonable rate in the proceedings in the United States Court for the Northern District to which all the parties to this cause were parties to that litigation.

"I make the same objection to Claimants' Exhibit #65-A, which is a form of contract proposed by the L. & N. Rail-[fol. 1978] road Company for the operation of logging trains over the Alabama & Florida Division, Florala Branch, Lakewood Branch, Southern Alabama Division, Camden Branch, Myrtlewood Branch, Pensacola & Atlantic Division, or Yellow River Branch, either interstate or intrastate traffic, because it is not shown those contracts have been used, that the conditions are the same in Florida, and the conditions do not appear to be the same."

"Mr. Adair: I now read in evidence from the annual report of L. & N. Railroad Company to the Railroad Commission of the State of Florida for the year ending December 31, 1932, the following excerpt from page number 521, to wit:

'581. Contracts, agreements, etc.—Hereunder give a concise statement of each contract, agreement, arrangement, etc., with other companies or persons which became effective during the year, and concerned in any way the transportation of persons or things making the statements in the following order. In lieu of giving abstracts, copies of contracts may be filed. Every copy of a contract furnished in connection with the foregoing requirement should be listed hereunder. The basis for computing receipts and payments should be fully stated in the case of each such contract, agreement or arrangement.

'(Title) King Lumber Company: Contract dated August 7, 1922, expires on thirty days notice. Operating locomotives and cars on Myrtlewood Branch at following rates: Twenty-five miles or less, $2.00 per loaded car, minimum charge, $6.50 per train, or $1.50 per loaded car, minimum charge, $12.00 per train, whichever results in the lowest net aggregate charge. Over 25 miles and less than 50 miles, $2.00 per loaded car, minimum charge, $24.00 per train.

'Alger Sullivan Lumber Company: Contract dated De-
[fol. 1979] cember 22, 1922, expires on thirty days notice. Operation of log train on main line of Southern Alabama, and Pensacola Division at the following rates: 25 miles or less, $1.80 per loaded car, minimum charge, $5.85 per train, or $1.35 per loaded car, minimum charge, $11.00 per train, whichever results in the lowest net aggregate charge.'

"Now I also read excerpt from page 525 of the annual report of L. & N. Railroad Company to the Railroad Commission of the State of Florida for the year ending December 31, 1921. It has the same caption as the other:

'Britton Lumber Company: Contract dated May 9, 1921, expires May 9, 1922. Operating locomotive and cars over the main line of the Lakewood Branch and Floral Branch at the following rates: 25 miles or less, at $2.00 per loaded car, minimum charge, $6.50 per train, or $1.50 per loaded car, minimum charge, $12.00 per train, whichever results in the lowest net aggregate charge. Over 25 miles and less than 50 miles, at the rate of $2.00 per loaded car, minimum charge $24.00 per train.' "

(Objection by Mr. Alston on ground that the date of these contracts is too remote from the period involved; that the conditions are not similar; that there is no relevancy in comparison of non-carrier conditions with those of a railroad, or common carrier conditions; and for the reasons already stated.)

An excerpt from the annual report of the Atlantic Coast Line Railroad Company to the Interstate Commerce Commission for the year ending December 31, 1929, being a photostatic copy of page 238 of said annual report, certified by the Secretary of the Interstate Commerce Commis-
[fol. 1980] sion, showing the rate of depreciation upon the locomotive and freight train cars of the Atlantic Coast Line, was offered in evidence as Claimants' Exhibit 66-A.

An excerpt from the annual report of the Atlantic Coast Line Railroad for the year ending December 31, 1930, certified in a like manner by the Interstate Commerce Commission, showing the like rate of depreciation, was offered in evidence as Claimants' Exhibit 67-A. (Tes. p. 430.)

(Objection by Mr. Alston to Claimants' Exhibits 66-A and 67-A, as being irrelevant and immaterial.)

The following was offered as Claimants' Exhibit #68-A.

This Agreement, made and entered into as of date this 29th of December, 1928, by and between Atlantic Coast Line Railroad Company, a corporation organized and existing under the laws of the State of Virginia, party of the first part, hereinafter called the Coast Line, and Brooks-Scanlon Corporation, a corporation organized and existing under the laws of the State of Delaware, party of the second part, hereinafter called the Lumber Company—witnesseth:

(Paragraphs number 1 to 6 inclusive dealt only with the following, viz:

(a) The Atlantic Coast Line Railroad Company sold, and the Brooks-Scanlon Company purchased all the shares of stock and securities of the Live Oak, Perry & Gulf Railroad.

(b) Said Lumber Company agreed to route exclusively via the lines of the Atlantic Coast Line Railroad and the Live Oak, Perry & Gulf Railroad, all manufactured products of its mill at or near Fenholloway, and whenever it could do so, to route preferentially via the Atlantic Coast [fol. 1981] Line all inbound and outbound traffic of other consignees or shippers, provided the rates of the Atlantic Coast Line Railroad are no higher than the lawful published rates of other railroad companies.

(c) The contract between the Atlantic Coast Line Railroad and the Carpenter-O'Brien Company (now Brooks-Scanlon Corporation) dated January 26th, 1914, was cancelled.

The foregoing paragraphs did not treat with trackage rights or charges therefor or with operations.)

7. (a) The Coast Line hereby grants to the Lumber Company the right to operate engines and logging cars, or flats, belonging to the Lumber Company over the tracks of the Coast Line between Wilcox and Perry, Florida, upon condition, however, that the products of such logs shall move via the Coast Line, via Perry, to point of final destination; subject, however, to the conditions and limitations hereinafter set forth, and to such reasonable rules and regulations as to the manner of operation and the time of operation of said trains as shall be, from time to time, required by the Coast Line.

(b) That the Lumber Company shall furnish at its own cost and expenses all engines, cars, fuel, supplies, all and other necessary materials for the operation of said engines and cars over the tracks of the Coast Line as aforesaid, between the points aforesaid, and shall, at all times, maintain the engines and cars in condition satisfactory to the said Coast Line, or its proper representative, and shall also see that the said engines and cars are so equipped and maintained, and from time to time examined and inspected as is, [fol. 1982] or shall be required by the present or any future law regulating the equipment used on the lines of the Coast Line, State or Federal.

(c) That the Lumber Company shall, at its own cost and expense, employ and furnish the necessary enginemen, trainmen, brakemen, fireman and all other necessary hands or employees for the proper operation of said trains over the tracks of the Coast Line, said employees and each and all of them, to be competent to perform their several duties in conformity with the rules and requirements of the Coast Line, and to be acceptable to, and subject to disapproval by the said Coast Line. And the Lumber Company hereby agrees that it will not continue in its services on said trains any member or members of such crew or crews as shall be designated by the Coast Line, or its proper representatives, as unsatisfactory to the said Coast Line.

(d) That the said Lumber Company shall, and it hereby agrees to pay to the said Coast Line, in settlement of monthly accounts under this contract, the salary or wages paid by the Coast Line for the services of a pilot, to be appointed by the Coast Line for each of the trains of the Lumber Company, operated on the tracks of the Coast Line as aforesaid. The Lumber Company hereby agrees to accept such pilot so appointed by the Coast Line as pilot in charge of its train, or trains; provided, the Lumber Company may, from time to time, request the Coast Line to change and furnish another man for said service.

(e) In the event that it becomes necessary, in the judgment of the Coast Line to employ and use additional telegraph operators to cover the movement of the trains of the Lumber Company over the tracks of the Coast Line, as aforesaid, said operators to be stationed at Perry, Wilcox [fol. 1983] and intermediate points between which said

trains move as aforesaid, then, in that event, the Lumber Company agrees that it will pay to the said Coast Line, in said settlement of monthly accounts, such amount or amounts as shall be paid by the said Coast Line as salary or wages for such extra or additional telegraph operators required by the operation of the Lumber Company over its tracks as aforesaid, for such time as they shall be continued in the service of the Coast Line, for the purpose aforesaid.

(f) The said trains of the Lumber Company shall haul logs only and no other class of freight whatsoever, and shall transport no passengers or persons other than the crews thereof; the said trains shall be loaded and unloaded at the cost and expense of the Lumber Company, and by its employees, and shall not be loaded or unloaded on the main line or main tracks of the Coast Line; provided, however, that this section shall not be construed to prevent or prohibit the Lumber Company from hauling saw-dust, or other saw-mill waste, from its mills at or near Feholloway, Florida, on the return movement of said trains for use in constructing or extending its woods, tracks to be built from connection with the track of the Coast Line near the points where said logs are cut.

(g) That said trains shall be operated under the orders of the proper representative of the Coast Line and the crews thereof shall receive orders and instructions from the officers and agents of the Coast Line, and shall be, in all respects, subject to, and shall obey the regulations of the Coast Line governing the operation of trains on its tracks, and the duties and responsibilities of its employees of similar class.

[fol. 1984] (h) The Coast Line agrees that it will, and it hereby does grant to the Lumber Company the right to have such connections between its woods tracks and the main track or side tracks of the Coast Line between Wilcox and Perry, Florida, as shall, or may be necessary for the purposes of this contract; provided, however, that the Lumber Company shall give to the Coast Line reasonable notice of its desire to have any such connections made, or to change the same. The Coast Line will thereupon cause such connection or changes to be made, and the Lumber Company agrees to pay the cost thereof to the Coast Line, upon receipt of bill therefor.

(i) That the Lumber Company shall, and it hereby agrees to pay to the Coast Line, for the privilege of using its tracks by the trains of the Lumber Company as (Tes. p. 435B) aforesaid, a trackage rate of One dollar and Forty-one cents ($1.41) per mile, per train, of twenty (20) cars or less, for the loaded movement; trains of less than twenty (20) cars to be charged for at the same rate as for twenty (20) cars, trains of more than twenty (20) cars to be charged for in proportion, to wit: Seven and five hundredths (7.05) cents additional for each additional car per mile, and it is mutually agreed between the parties hereto that the minimum charge for any one movement of said trains over the lines of the Coast Line shall be Fourteen Dollars and Ten cents ($14.10) per train of twenty (20) cars, or less. It is further agreed that there shall be no charge made against the Lumber Company by the Coast Line, for the return of the empty trains from the mill to the connection with the woods tracks of the Lumber Company.

(j) The Lumber Company shall, and hereby agrees that it will ship via Perry and the line of the Coast Line and its [fol. 1985] connections, all of the manufactured product, or its equivalent of logs carried by the Lumber Company by trackage hereunder to its mill at or near Fenholloway, Florida, provided the rates on said lumber or other products of said logs, via the Coast Line are as low as the lawfully published rates via any other railroad companies. It is understood that the amount of lumber shall be the amount of logs so hauled converted into lumber and other timber products, and not the weight of the logs so hauled. And it is further understood if the Lumber Company shall route an equal quantity of lumber and other products via Perry, Florida, either before the Lumber Company avails itself of the trackage rights herein mentioned or at any time while the Lumber Company is using said trackage rights, the agreements of the Lumber Company as to routing via Perry, Florida, shall be deemed complied with in all respects.

(k) That the Lumber Company shall, and it hereby agrees, that it will execute and deliver to the said Coast Line on or before the date of availing itself of the privilege of the said trackage rights given by this contract and at all times thereafter maintain, while the said trackage — are

enjoyed, a good and sufficient bond, with corporate surety, satisfactory to the Coast Line, for the penal sum of Ten Thousand Dollars ($10,000.00) conditioned to indemnify and save harmless the Coast Line from any loss, costs, injury or damage of any and every character, that may be sustained or incurred by the Coast Line, by reason of the trackage privilege hereby given to the Lumber Company under the terms aforesaid, or by reason of any accident, injury, casualty, or other mishap that may occur by reason of the operation of said trains of the Lumber Company over the tracks of the Coast Line as aforesaid; except such as may be due to errors of operation or the negligent oper-[fol. 1986] ation by the Coast Line of its own trains. The same Lumber Company further agrees that it will assume all liability for injury or damage to its equipment while on the tracks of the Coast Line, to the same extent as if said equipment were upon tracks belonging to the Lumber Company at the time of any such injury so received as aforesaid.

(l) That all settlements and payments, under this contract, for the running and operation of said trains over the tracks of the Coast Line aforesaid, and for other services hereinbefore provided for, shall be made by the Lumber Company to the Coast Line monthly, at the end of each month.

It is mutually covenanted and agreed that the trackage rights hereby granted shall continue in force until the Lumber Company has cut all of the timber now owned or hereafter acquired by it in the territory covered by this agreement.

It is hereby further mutually covenanted and agreed that any alteration, amendment, change, or cancellation of this agreement, or any portion thereof, which may be determined to be necessary as the result of any law or order, or judgment of any competent court or Commission having jurisdiction over the parties hereto, shall not be deemed to be a breach of this contract by either party.

In witness whereof the parties hereto have executed this agreement in duplicate, the day and year first above written.

Atlantic Coast Line Railroad Company, by Lyman Delano, Executive Vice President. Attest: J. T. [fol. 1987] Post, Asst. Secretary. Witnesses:

E. R. Burriss, L. C. Allen. Brooks-Scanlon Corporation, by M. J. Scanlon, President. Attest: F. A. Rautenberg, Asst. Secretary. Witnesses: W. H. Baker, G. L. Rutherford.

"Mr. Adair: We call the attention of the Master to the following portions of the printed record which was before the Interstate Commerce Commission upon the original proceedings, and which was before the United States District Court for the Northern District of Georgia, Atlanta Division, and the Supreme Court of the United States in this proceeding, namely: The testimony of J. Lowell White, printed record pages 522 to 532, inclusive. Again at pages 560 to 562, inclusive. Again at pages 709 to 715, inclusive. Also to Exhibit #25 of the witness, White, at the printed record pages 294 to 307, inclusive. Also to the testimony of J. W. Perrin at the printed record page 522. Likewise the statement of A. S. Wells, Chairman Florida Railroad Commission at pages 627 to 629, inclusive, and the testimony of Fred Pettijohn, pages 629 to 641, inclusive, also the printed record at pages 644 to 656, inclusive, and to Exhibits numbers 39 and 40 of the witness Pettijohn in the printed record at pages 369 to 377 inclusive.

"The purpose of calling the attention of this testimony to the Court of the Witness White and those exhibits is not that we offer that evidence on behalf of the Claimants, but to show that testimony of the Witness Pettijohn, and the exhibits of the Witness Pettijohn, in criticism of the [fol. 1988] analysis of the Witness White, and his exhibits.

"We will prepare and furnish to the Court copies of those various several contracts made between the Atlantic Coast Line Railroad and the Wilson Cypress Company, the Cummer Cypress Company and the Carpenter-O'Brien Company, which were in the printed record, which have already been called to the attention of the Master. As a matter of convenience we will have copies of the contracts made and filed and give the succeeding numbers so the Court will not have to go back to the record for them.

"We now offer in evidence as Claimants' Exhibit Number 69-A, a map of Florida to which several of the witnesses have testified at this hearing."

E. W. SCHERER, recalled by the claimants, testified as follows:

Redirect examination.

By Mr. Adair:

I was sworn this morning. I am connected with the Brooks-Scanlon Corporation. The Brooks-Scanlon Corporation has not shipped or transported any logs under this agreement dated December 29, 1928, between the Atlantic Coast Line and the Brooks-Scanlon Corporation, which is Claimants' Exhibit #68-A. The contract is still in force and effect. I think the Brooks-Scanlon Company gave a bond as provided for in that contract; I have not seen the bond, but I am satisfied that it was furnished.

"Q. That contract purports to cover or authorize the shipment of such timber as the Brooks Scanlon Company may acquire in that particular vicinity; will you tell me how far the furtherest timber is located, that the Brooks-[fol. 1989] Scanlon Company now owns, from Perry in that vicinity?"

"A. Their timber holding extends to the Suwannee River."

The Suwannee River is approximately 65 miles from Perry. (Tes., p. 441B.) I don't know definitely how far it is from Perry to Wilcox, but I imagine Wilcox is about ten miles beyond Old Town, I mean beyond the Suwannee River. Our timber runs from the mouth of the Suwannee River up the river to the eastern line of Dixie County.

HENRY J. SAUNDERS, sworn for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is Henry J. Saunders, Consulting Engineer, Statistical and Accounting Analyst, Washington, D. C. I was first employed in the Engineering Department of the Union Pacific Railroad in 1899 and have continuously prac-

ticed my profession during the 34 years since that time. I was graduated from the University of Wisconsin in 1903 with the degree of Bachelor of Science in Civil Engineering. In 1910, the same University awarded me the higher degree of Civil Engineer after I presented a thesis on the subject of railroad construction costs. I was employed on railroad work for the Union Pacific Railroad and on irrigation work for the United States Reclamation Service, and by the engineering firms of Arnold & Company, Chicago, and Ford, Bacon & Davis, of New York, prior to 1914. I also practiced as Consulting Engineer in Montana from 1912 to 1914.

In July, 1914, I entered the service of the Interstate Commerce Commission, Bureau of Valuation, at San Francisco, California, first as Office Engineer and later as Supervising Engineer. I was continuously in the employ of the Commission until November, 1928, the period from 1921 to [fol. 1990] 1928 being in Washington, D. C. During the time I was with the Interstate Commerce Commission, both at San Francisco and in Washington, I had charge of all cost work in connection with the Bureau of Valuation. During this period I had a number of accountants directly reporting to me who made analyses of costs under my supervision. These included not only costs of construction projects, but studies of operating and maintenance expenses. All of this work necessitated intimate knowledge of the various Interstate Commerce Commission Classification of Accounts and the proper separation of charges as they appear in the carrier's books.

During the period 1922 to 1928 I appeared as the Commission's witness with respect to cost and valuation matters in over 100 hearings. I have been a Consulting Engineer and Analyst since November, 1928, specializing in railroad and utility valuation and accounting matters, and have appeared before the Interstate Commerce Commission in over 30 cases relating to valuation and recapture. I also appeared for Swift & Company and other packers in the Eastern Live Stock Cases, Docket 16746, where I presented an analysis of the various operating cost exhibits relied upon by the railroads. I am also retained by the same packing interests in the case known as "Protective Service for Perishable Freight," Docket 20769. In this case I also have analyzed costs of switching and icing re-

frigeration cars. I was retained in 1928 by the Public Utilities Commission of the District of Columbia in connection with the valuation of the Washington Gas Light Company and the Georgetown Gas Light Company; by the United States War Department in the Bonnet Carre Spillway Case before the United States District Court of [fol. 1991] Louisiana; by the St. Joseph Stock Yards Company in a case before the Secretary of Agriculture involving the determination of depreciation charges, and by the Gandy Bridge Company of St. Petersburg, Florida, in a rate case before the Florida Railroad Commission. For this latter, which is a $5,000,000 toll bridge, I not only made an appraisal of the property for rate-making purposes, but also made certain accounting adjustments for the consideration of the Florida Railroad Commission which were adopted by that Commission as a basis for the Gandy Bridge Company's restatement of its accounts.

It has been necessary in all of my railroad work to analyze the carriers' accounting records and apply the Commission's various accounting classifications. In my consulting work I have advised carriers as to accounting procedure and have conferred many times with the Interstate Commerce Commission's Bureau of Accounts and the Accounting Section of the Bureau of Valuation with respect to interpretations of the Commission's orders to carriers. I have recommended various adjusting entries for these carriers and have prepared accounting reports, such as the annual recapture reports to the Bureau of Finance and returns to the Commission's Valuation Orders 3 and 25. I have also assisted many carriers in the preparation of certain parts of their annual reports to the Bureau of Statistics. I have used the annual statistical reports of certain carriers and the Commission's reports of statistics of railways many times in connection with my cost studies. I have also developed statistics from other agencies than the Interstate Commerce Commission, such as the Bureau of Railway Economics, the Department of Labor, Department of Commerce, and other sources of statistical information in Washington. I am a member of the American Society of Civil Engineers and the Washington Society of Engineers.

[fol. 1992] "Mr. Alston: I notice that this witness is reading his testimony. Every word so far has been read. I

don't think that is a proper way to give testimony in a court of law or court of record. We object to that method."

"Mr. Adair: If the Court please, both Perrin and Lamb in this case referred to notes and in many instances read what was on the paper. If he wants any assurance (Tes. p. 445B) as to who wrote the testimony and who made the notes to which the witness has testified, I will say that it was done by the witness, and not counsel, if that is what he means.

"Court: I don't know of any authority right on that point. It looks like the question ought to be settled and probably ought to be settled now. As a general rule, when a witness testifies in person he is supposed to give oral testimony. He has a right to refer to memorandum to refresh his memory. It is a brand-new proposition to me.

(Argument by counsel.)

"Court: I am rather inclined off-hand—of course this is a ruling without any authority, not based on any authority that I recall, at least none that either of you present; my disposition at this time, or my opinion at this time, is that the witness could not just answer questions by reading the answers literally. I think he could refer to notes or memorandum and refresh his memory and testify, but I don't think he could do that to the extent of reading so much as to practically amount to reading the answers literally. He couldn't violate the rule, if that is the rule, and I am inclined to think it is at this time; he couldn't read the answers to the questions previously prepared. I will rule on it in my final report."

[fol. 1993] Cross-examination.

By Mr. Alston:

"Q. You appear to have written out answers to a lot of questions. Am I right about that?"

"A. Yes, I wrote the questions and answers myself."

I have not written the questions for Mr. Adair to propound to me; I was simply trying to state what I had in mind. I did not intend for Mr. Adair to just adopt my questions and answers. I didn't intend to give him the questions to ask me. It was only to give the thought I

had in mind. I didn't intend to give Mr. Adair the language. I wouldn't do that with any attorney.

"Q. You said it was in your language?"
"A. Yes, I put it in my language."
"Q. Then you did that for him as a witness?"
"A. I did that to get my answer so that it would be in response to the questions that Mr. Adair would frame, but not for him to adopt. I prepared the entire memorandum I have here."

At various time I have discussed the questions and answers with Mr. Adair and Mr. Ashby who are counsel for the claimants in this case.

"Mr. Alston: He ought to put aside his book. He has got a loose-leaf book from which he reads his answers."
"The Witness: I will close it."
"Court: I am inclined to think he could refer to any memorandum he might have and testify from this recollection any fact which he testifies as refreshed by that memorandum; or he could testify to any fact without re- [fol. 1994] ferring to the memorandum, of course. I think the witness has got a right to refer to any memorandum and refresh his recollection."

Redirect examination.

By Mr. Adair:

"Q. Mr. Saunders, have you undertaken, in this memorandum, to prepare to teach me how to examine witnesses, or teach me about how to examine you?"
"A. No, sir."

"Mr. Alston: That is leading."
"Court: Go ahead; you might reframe your question, if it is leading."

"Q. Under what circumstances was this memorandum prepared and why?"

"A. I prepared some 20 or more exhibits and wished to put them down in systematic form, consecutively, my thoughts in regard to those exhibits. In each exhibit (Tes. p. 451B) it was necessary for me to describe the facts and

figures shown on the face of the exhibit, but I had to go further and make comparison in other cases, I had to make continuous reference to records, which I did, and recorded them by page number, and gave the facts I found. It was impossible for me to carry all that in my head. I had to put it down in what I considered to be a logical manner in presentment of the case. That was the whole purpose of the memorandum, to get up a logical statement so it would be easily understood and give me opportunity to record the various facts and figures.

I have had about 150 cases. When statistics were involved I always did this way. I know of only one logical method employed by statisticians in my profession in preparing this sort of memorandum of testimony and that is the one that I am following. I don't know of any other method. Another statistician may take up the reports and [fol. 1995] read them but he couldn't prepare a case without having a minute memorandum of what he did.

Recross-examination.

By Mr. Alston:

I testified as to cases that I have been in, that I gave evidence in; those included Commission cases and one court case. I do not need to read evidence of my life when I can tell that out of my head, but I put it down in a manner to conform with statements I made in other cases. I put it down in a systematic form. It helps the court to have it in a logical and reasonable form.

Redirect examination.

By Mr. Adair:

"Q. You can open your book, unless directed by the Court not to do so, and refer to it as often as you desire to refresh your memory, but do not read any answers to any questions, but refer to it to refresh your recollection as often as you find it is necessary to tell the truth, the whole truth and nothing but the truth. Tell me what, if any investigation you made with reference to the log traffic in Florida?"

"Mr. Alston: I do not object to the first question and answer as to his qualifications."

"A. I examined the various records before this court and also the record before the Interstate Commerce Commission and the testimony and exhibits presented by the railroad witnesses, the Commission witnesses and others, and have examined the report of the Atlantic Coast Line during the period under consideration, which was Feb-
[fol. 1996] ruary, 1929, to May, 1931, and many other reports. In addition to those, I personally viewed the report by the Atlantic Coast Line Railroad to the Florida Railroad Commission. I also examined all the exhibits relating to the matters that I was studying in my analysis which have been filed before this court. I examined exhibit number 23 that was introduced by the witness, Lamb, in this proceeding. This exhibit was the only one I had before me at the beginning of my study that showed any cost directly applicable to the log traffic, and by that I mean, those that were not computed and calculated from other sources of information.

I have prepared an exhibit from the analysis of that exhibit. This will be Claimants' Exhibit #70-A. In this exhibit I used the heading, after stating the case, "Correction to Carrier's Exhibit 133 in I. C. C. Docket 18364." This line and title, I think, should be corrected to read "Correction to Lamb's Exhibit 23", but for convenience I have used the I. C. C. exhibit. I have set out names of the account used by Lamb in exhibit 23. In column two I have set out $2,398.55 which was the total out-of-pocket cost which was found by Lamb from Hines to Palatka in the movement of 1930. His exhibit also shows the total car miles loaded and empty of 120,532. It shows the total gross ton miles of $3,863,451. The evidence (Tes. p. 455B) in this case shows that the figures for account 394, which is for fuel for train locomotives——

"Mr. Alston: I object to what the evidence shows."

"Court: I don't know as he would have a right to say what the evidence shows."

"Mr. Adair: When you refer to things as being shown by the evidence signify who said it. Now go back to the 394 item."

[fol. 1997] Item 394 was fuel for train locomotives, $1,138.49 and it came from Lamb's exhibit #23. Now in explaining the out-of-pocket cost which we have shown in column 2, in order to get the total operating expenses for

the movement of the log trains it will be necessary to use what is known as system ratio, and that ratio is based upon relation of out-of-pocket cost of the system to the total operating expenses of the system. This total operating expense of the system would contain all the cost of handling the Company's freight, so that in effect, if we add in here the ½ cent per ton mile, as proposed by Lamb in his exhibit, I mean for coal, the per ton mile for coal, we would involve confusion since the operating system cost already contains the complete hauling cost on the coal. I mean that under item 394, which is fuel for train locomotives, total $1,138.49, if you add unto that this additional sum for transportation of coal it would be in there twice. Yes, that covers the Hines to Palatka movement in 1930.

The total out-of-pocket cost would be $2,116.38. That represents 1.76 cents per car mile, or .0548 cents per thousand gross ton miles. This figure that I have just read may be compared with the corresponding system cost in which the out-of-pocket expenses for the system was $6,180,383.19 for 1930. The car miles were 306,314,024, or this was 10,341,858 thousand gross ton miles. If you reduce it to a unit the system out-of-pocket cost would be 2.02 loaded and empty car miles, or .598 cents gross ton miles. The purpose of this comparison was to show where we had an actual cost of log movement it was much less than the system cost which have been used for comparable purposes. The Florida out-of-pocket cost was more than the Hines-Palatka cost. In making the comparison with the system we want to bear in mind also that the system [fol. 1998] cost contains 36 per cent of products of mines which is one of the lowest costs of traffic that was moved.

There are several other adjustments which should be made to bring it to a basis of what might be termed average cost, adjustments in Lamb's exhibit. I have shown in Column three adjustments which I would suggest. One relates to coal. The Atlantic Coast Line Railroad reported in 1930 that they used 109 pounds of coal per thousand gross ton miles for the entire system.

"Mr. Alston: He states that the Atlantic Coast Line reported so and so. Where is the report, and what is the report?"

"A. The Atlantic Coast Line Railroad's annual report to the Interstate Commerce Commission sworn to by them."

(Objection by Mr. Alston that it is not the best evidence.)

This figure 109 pounds included the locomotive in the calculations of the thousand gross ton miles. The locomotive ton mile eliminated by my own calculations make that 123 pounds per thousand gross ton miles the Atlantic Coast Line used on an average in the year 1930. This figure is reasonable when compared with that used by other railroads. The entire Southern District, as reported to the Interstate Commerce Commission, used an average of 122 pounds per thousand gross ton miles.

"Mr. Alston: I object to that because it is not the best evidence and further we object to this witness continuing to read his testimony from a memorandum."

"Q. Are you reading your testimony or getting it from figures. Are you reading your testimony, Mr. Saunders, or just referring to figures?"

"A. I have not read any of it verbatim since the first question and answer. I am only taking the figures because [fol. 1999] I can't carry all of those figures in my head."

"Mr. Alston: It is not a question of what he knows of his own knowledge, but what he got from his report."

"Q. Your testimony as to the 122 pounds, as to the data from the entire district, where did you get it?"

"A. From the annual report of the Interstate Commerce Commission. I keep a file in my office. I continually go to the Commission to get similar information from their files."

It is a public document; it is reported to Congress. I think I can get a copy of it. We will prepare a certified copy.

The Lamb Exhibit and testimony shows that the Atlantic Coast Line Railroad used a total of 291 tons of coal in this movement from Hines to Palatka; that averaged 151 pounds per thousand gross ton mile. This was over the system average of the Atlantic Coast Line and the average cost used, which was $2.94 per ton cost of this fuel, would be $698.55, which I have shown in column three opposite account 394 of my Exhibit 70-A. Now similar account 392, the evidence shows that $506.19 in the Lamb Exhibit 23 as being the cost of the train enginemen during the month of

November. The Atlantic Coast Line average cost for train enginemen during the year is $.98 per hour. I made recalculations on the 25 trips those trains made, that is, the record in the Lamb Exhibit. I assumed that each one of the employees would receive pay for eight hours time. That is taken from the testimony of the witnesses in this case, or from the testimony of the witness, Langley. He also testified that the return trips usually take about six hours, so I used eight hours for each one of the trips. I wanted to be conservative on that. The time and rates I have used included average overtime of the Atlantic Coast [fol. 2000] Line system, that is, $.98 for train enginemen includes cost of overtime. Similarly account 401 in my exhibit 70-A has been adjusted from $562.86 shown in column 2 of the report by Lamb to $427.00 shown in column three which includes calculations of eight hour runs for twenty-five trips. The conductor received on an average over the Atlantic Coast Line system 83.7 cents per hour; flagman and brakeman received 65.5 cents per hour.

"Mr. Alston: I object to that about the averages because it is not offered as direct knowledge of this witness." (Tes. p. 460B.)

The average figures are reported to the Interstate Commerce Commission in the annual report of the Atlantic Coast Line and I have stated that this included full time and overtime. These figures are reported for the year 1930; that report is the one that I am going to file with the court.

(Renewal of objection by Mr. Alston that the witness is giving secondary evidence.)

The total cost shown in column three represents the difference between the Lamb Exhibit 23 amounting to $297.25. That is out-of-pocket cost only, but it represents $.297 per car mile and $.077 cents per thousand gross ton miles. At the bottom of my exhibit I have shown the corrected cost per car mile and corrected cost per thousand gross ton miles, and again I might compare those with the system cost; the system cost per car mile was $.018.

(Objection by Mr. Alston to the witness saying it is substantially correct, and further objection that witness is still reading his evidence.)

I am not reading anything but figures. The calculations are from your own witness, Lamb, from his exhibit 23. [fol. 2001] The system per gross ton mile cost was 59.76 cents. In my exhibit 70-A I have shown the corrected cost per gross ton mile to be $.43002. Lamb also reported the Third Division cost of Atlantic Coast Line and those were 2.952 per car mile and 88.29 per gross ton mile which really doubled the gross ton mile cost shown in my exhibit 70-A.

This is Exhibit #71-A. The figures I have produced in Exhibit 70-A for the total out-of-pocket expenses, namely, $1,661,36—I have made a few corrections, which, with the necessary corrections amounts to $2,116.38, for the company's haul of coal only as shown in the first line of my exhibit.

In #71-A, under the head of "out of pocket" cost from Hines to Palatka, I have obtained the ratio of out of pocket expense to the total line haul expense by basing that ratio system out of pocket expense of $20,443,134, shown in line 2 of my exhibit 71-A, to the total line haul expense of $20,432,664. I have a subsequent exhibit explaining in detail how those figures were arrived at, and 31.53 per cent is used to bring out the out of pocket expense shown in line one to the total line haul expense which I have shown in line 3.

The out of pocket expense is the basis which came from the Lamb Exhibit; column 2 containing full adjustments and three contains the single adjustment for the company's haul. I am carrying through those two calculations simply to show that on either basis the result will be below the revenue received from the Cummer scale. Now, in line four I have shown terminal and switching expenses on the basis of 1051 loaded and empty cars at $.30 per car as shown by Lamb's Exhibit. The basis of this estimate is that the total switching amounting to $315.30 would cover [fol. 2002] whatever switching movement was necessary for log cars. The switching charge of $.30 was based on the engine cost of $12.00 and a train of 40 cars estimate. $12.00 divided by 40 cars gave $.30 per car. That is an estimate including switching movement of all cars which I understand from the testimony in this case, which I heard on yesterday, did not take place; only a switching movement at a certain point. The line haul train handled the log cars in many instances. That was true at Hines. The

line haul cost would cover the cost of that particular switching. This switching is the switching of the switch engine separate and distinct from the line haul engine out of pocket cost which they have got in this statement in Exhibit 23. In line five, column two and three, by addition of those two columns I secured the figures shown in line five of $5,584.44, and in column three of $7,027.57. Those represent the total operating expenses. That in column two being corrected for all necessary adjustment, and column three being corrected only for the company's haul of coal. Now that operating expense is complete in itself but in order to bring that up, the figure which may be compared with the revenue item, I applied the system operating ratio of the Atlantic Coast Line which was 78.84 per cent. That operating ratio is the ratio of revenue to all expenses received by the Atlantic Coast Line in the year 1930. The result of the application of this ratio, less the operating expense item, which would include taxes and overhead expenses not covered by expense items themselves, would give an average fair return received by the Atlantic Coast Line during this year, 1930, on its business. In other words, I am not going to burden this particular business with any more than an average burden for the system as a whole. [fol. 2003] This 78.84 per cent accomplishes that result. That is shown in line six which is $7,083.26, and in column three, $8,913.71. Those two figures which I have just read corresponding revenue figures which may be compared to the log revenue which would have been received on the basis of the Cummer scale. The Lamb Exhibit shows 313,600, and applying the rate for 119 miles would be 3.2 cents, giving a log revenue of $10,035.50. There was certain other freight of small amounts that was hauled by the trains estimated at $100.00, giving a total revenue which would have been received with the log revenue under the Cummer scale, an estimate of $10,135.20, which would leave a surplus over and above all cost for operating expenses, taxes and fair return on the property of $3,051.94 on the basis of this adjusted out of pocket cost, and $1,221.49 on the basis of the Lamb Exhibit 23. On either basis there is substantial margin between the Cummer scale and the actual figures. I am proceeding upon the theory that it moved under the Cummer scale.

I have prepared another exhibit which undertakes to show the return of revenue cost on log movements from Hines to Palatka under the Cummer scale or other scale or rates upon a system of charges. This will be Claimants' Exhibit 72-A. In preparing this exhibit I had before me certain documents that were testified to on yesterday; two I remember in particular were 63-A and 64-A, relating to the car mile cost and car rental. I prepared this exhibit on the theory outlined in those documents as to the cost of movement of trains over this portion of the track of the Atlantic Coast Line. One was a reciprocal agreement between the Seaboard and Atlantic Coast Line and several other railroads. The other one was the Brooks-Scanlon contract dated in July, 1924, which related to the [fol. 2004] rental of equipment. The Brooks-Scanlon contract covered the rental of 75 flat cars for use in the log movement. This other agreement was an agreement between the Seaboard and several other railroads, including the Atlantic Coast Line. (Tes. p. 465B.) It contained a provision for trackage at six cents per car mile and $1.50 per train mile. In this exhibit I took the reported out of pocket cost from Lamb's Exhibit 23 of $2,398.55. I have used in that case all out of pocket costs including his estimate of the company's coal haul. I gave everything he claimed in there. On line two I cover other operating expenses on the basis of various agreements and documents referred to, several of which cover six cents per car mile. There were 58,503 loaded cars and under the agreement the empties were returned free. That gave $3,510.18 for that portion of the operating expenses. I have included the rental of the locomotive for this 30 day period at $43.69, which is one mill per pound of tractive effort. This particular locomotive was rated at a tractive effort of 43,650; that gave locomotive rental at $1,310.70. For the item of running repairs, a proportion of which would at least be covered in the rental figure, I have included a rental rate for the locomotive reduced to 30 per cent. The Atlantic Coast Line report for locomotive repairs included major repairs as well as running repairs which would include installation of a new boiler and new flues and heavy repairs of that nature. All I attempted to cover here is the light repairs such as putting in new brake shoes and fixing the

air hose and the like; that gave $145.48. The figures on those averages all came from the Atlantic Coast Line's annual report for 1930, which I will undertake to supply to the Court.

[fol. 2005] Tractive effort of the locomotive is computed from its ability to pull. In other words, the grades and curves and the loading and all of those factors enter into the computation of the tractive effort. It is really a question of how many tons it can pull; it is really a question of ability to pull. It would probably have more relation to tonnage capacity over the track than to what horse power would be in an automobile.

In line five of my Exhibit 72-A I have shown the car rental based on the car miles, the basis referred to in one of the previous exhibits, of .006 per car mile. The loaded and empty car miles were shown on Lamb's Exhibit #23. The car rental item totaled $723.19. I am developing the cost here that would be the cost to another company other than the Atlantic Coast Line, if it operated with the Atlantic Coast Line expenses, and I have shown that it would have to rent cars for this particular movement. I got this six mills (.006) per car mile from one of the exhibits put in evidence yesterday. I don't have the exhibit before me at this time; I think it was in the reciprocal agreement.

"Q. I now hand you, Mr. Saunders, Claimants' Exhibit number 64-A, purporting to be a contract between the Atlantic Coast Line and the Brooks-Scanlon Corporation with respect to the rental of railroad cars, and ask you to examine that contract and determine whether or not that was considered in these computations?"

"A. Yes, sir; I had these documents before me at the time I made the original computation."

"Q. That is the original car mile rate?"

[fol. 2006] "A. Paragraph number three states that the lumber company would be allowed by the railroad six mills (.006) per car mile, which is the tariff rate."

In line six of this exhibit 72-A I have shown the average actual cost of repairs of cars to the Lumber Company that is in this identical service. That figure is probably conservatively high because any rental such as six mills per car mile is supposed to include a considerable portion of all repairs. Now the testimony I have heard in this case in-

dicated that the major portion of the repairs was paid by the Lumber Company. In allowing the average for the year, of $470.16, which was an average for one month of the year, we allowed not only the so-called running repairs which would be made by the one using the car, but we also included many of the major repairs which are supposed to be paid by the owner under the rental agreement. For the switching, using the same basis I did in a previous exhibit of $.30 per car for the 1,051 cars, I obtained $315.30, a total cost on this basis of $8,873.56, which, reduced to the cost per car by dividing 498 loaded cars shown in Exhibit 23 into $8,873.56, would give you $17.82 per car. Now the revenue under the Cummer scale would have been $20.35 per car, and the actual revenue paid under the I. C. C. scale was $41.13 per car. Yes, this is based on this reciprocal agreement introduced yesterday with respect to the charge made and the revenue paid, and the Brooks-Scanlon contract with respect to the rental of cars.

There is an error in item two on my exhibit 72-A. It says "other operating expenses based on .06 per car mile for 58,503 loaded car". It should be "loaded car miles." The word "miles" should be inserted after the word "car."

The six cents (.06) per car mile as an estimate of what [fol. 2007] would be a reasonable trackage estimate is the contract rate that was in the testimony of several witnesses here yesterday. I heard Mr. MacPherson testify. His testimony was that he could have made such a contract with the Seaboard Air Line Railroad and the Georgia Southern & Florida Railroad. I did not get that from this reciprocal agreement; this came from the various documents which are of record in this case. (Tes. p. 470B.)

(Objection by Mr. Alston to this exhibit on the grounds that it shows the car rental is not one which this witness has established but he is undertaking to base it on somebody else's statement; that it does not deal with the circumstances and conditions of this company and thr transportation involved in this cause; that it does not purport to deal with a common carrier transportation; and it does not set out all the evidence that should be set out in ascertainment of the expenses of the Railroad Company.)

This item of $17.82 shown on my exhibit 72-A contains profit. All of the rental figures which comprise $3,510.18; $1,315.70 and $723.19, contain an element of profit. The

revenue under the Cummer scale for that per car would be $20.35. I estimated the cost per car at $17.82 under my study. The revenue under the I. C. C. scale per car is $41.13.

I have prepared another exhibit in connection with this Hines to Palatka movement. It will be Claimant's Exhibit Number 73-A. This exhibit is based upon the assumption of connecting railroads. It reads: "Statement showing estimated charges for entire movement of logs, Hines to Palatka, Florida, for November, 1930, based where applicable on regulations dated January 1, 1926, covering reciprocal rental rates and charges as between railroads." As I say, this exhibit is based upon the assumption of connecting railroads. You could take a train at Hines, provided that connecting railroad was a party to this reciprocal [fol. 2008] agreement and come out with the cost as shown. The reciprocal agreement provided for a rate of $1.50 per train mile. By "reciprocal agreement" I refer to Claimants' Exhibit 63-A, being a letter directed by Stockard of the Atlantic Coast Line Railroad under date of January 18th, 1926.

"Mr. Alston: When he refers to the contents of agreement 63-A, we must object to it as being secondary evidence, and the reason for doing that is that Exhibit 63-A had a very much more limited application, as I understand it, than the circumstances which the witness is relating, and it relates to movement of wrecking trains, working trains and other equipment requiring train service. If there is any other service in there I don't know it."

"Mr. Adair: We are applying this cost study based wholly upon this agreement. We think this covers everything between the railroads except the freight cars. It speaks for itself. We think the evidence is very relevant. We are not trying to change it. It is certainly a proper basis for cost study and should be allowed by your Honor."

(Witness continuing:) The out of pocket costs on line two are those reported by Lamb in his Exhibit 23. I have followed Exhibit 63-A, the agreement which provides for fuel, wages and supplies, A. C. L. cost plus ten per cent on wages, 15 per cent on supplies, and .30 per ton on fuel. This being the out of pocket expenses on the basis of the reciprocal agreement. The rental of the locomotive is one mill per pound of tractive effort per day previously de-

scribed in connection with Exhibit 72-A, one mill per pound of tractive effort as provided in the reciprocal agreement. The 30 per cent running repairs of the locomotive is the same as previously described in Exhibit Number 72-A. [fol. 2009] The rental of cars shown on line five is a uniform rate of one dollar per day provided as a demurrage between the carriers. The lumber company average repairs per month in 1930 is explained in Exhibit 72-A, and similar switching at thirty cents per car was as described in the previous exhibit. The total charge under this estimate amounted to $10,155.27, compared with the revenue as shown (Tes. p. 475B) on my Exhibit 71-A. The revenue under the Cummer scale would be $10,135.20. The revenue actually received under the I. C. C. scale would be $20,484.00. Reducing this to per car basis for this movement under this estimate the result would be $20.39 per car. Under the Cummer scale it would be $20.35 per car. Under the present I. C. C. scale it would be $41.13 per car, and it should be noted that revenue under the I. C. C. scale is nearly twice the revenue produced by the estimate which would be the total cost to a connecting railroad working under this reciprocal agreement if it made this movement over the line from Hines to Palatka.

Item number one on Exhibit 73-A reads, "Trackage 25 trains, 119 miles, at $1.50 per train mile, $4,462.50"; that allows 25 trains both ways. That is what a connecting railroad would pay under the reciprocal agreement.

In Exhibit 72-A, which shows a car basis of six cents per car mile, the total charge for the movement was $3,510.18. If it operated under the reciprocal agreement between the railroad it would be $4,462.50.

The items in Exhibit 73-A, with the exception of line four of $145.48 and line seven of $315.30, did all contain profit. In item two I took the Lamb out of pocket expense, but I [fol. 2010] added a percentage which covers overhead, ten per cent for wages, fifteen per cent for supplies, and thirty cents per ton for fuel.

Objection by Mr. Alston to Exhibit 73-A and the evidence that has been given thereon for the reason that the exhibit is based upon a reciprocal rental contract which does not apply under these circumstances.

"Mr. Adair: I fail to see that Exhibit 63-A is confined to emergency."

"(Court: I thought I caught something in there about the rental of cars, but when I read it over I didn't see anything in it about the cars. I read it all; I read it over."

"Mr. Adair: What we applied was a $1.00 per car which Perrin testified in this case is universal, which he said was a universal charge for all cars—flat cars, box cars and all sort of cars, freight cars, between railroads, and we have given a full 30 days on the locomotive and 30 days on the cars. And at this time and in that connection I want to offer an excerpt furnished us by the Atlantic Coast Line Railroad of a contract made and dated January 12, 1929, right at the beginning of this period, with the United States Sugar Corporation for the rental of 75 flat cars to the Sugar Corporation for $1.00 per day, subject to termination on 20 days notice. This excerpt was furnished us upon our demand for documents from the Railroad."

"The Court: I don't think he testified that he knew the document showed a rental of one dollar. My recollection is he said it was a universal custom between railroads."

"Mr. Alston: There is no evidence that the railroad entered into permanent rental of that sort for a continuous year by year rental. The paper Mr. Adair has just read [fol. 2011] from with the Sugar Corporation terminate on a 20 days notice."

"Mr. Adair: This will be Claimants' Exhibit Number 74-A."

(Witness continuing:) I have prepared Exhibit 75-A with reference to this particular reciprocal agreement number 63-A. This exhibit is based upon the general rates over the same period as Exhibit 73-A, only in this case I am assuming that the connecting railroad at Hines would wish to move one train from Hines to Palatka and that would comprise the entire movement for one month; there would be no other movement but this one single train of 40 cars. The rate used was exactly the same rate described in connection with my previous Exhibit 73-A already in evidence. For instance, in the first item there would be a train movement 119 miles at $1.50 per train mile and that would give $178.50. The out of pocket expenses have been adjusted as in Exhibit 73-A, bearing the percentage provided in the reciprocal agreement, but I have reduced it to a single movement by dividing it by 25 reported in the previous exhibit. I have gone through the entire list of cost and

made adjustments until they show one movement over this line. The total cost of $338.32 would then represent what the connecting railroad would pay if it wished to move the train of 40 log cars from Hines to Palatka. The revenue which would have been received under the Cummer scale under this movement of log cars would have been $771.94. Under the I. C. C. scale it would have been $1,568.00. Now the charge for the movement of a single car in this service as estimated would be $9.71. The revenue under the Cummer scale would be $19.30. Under the I. C. C. scale it would be $39.20. That is proceeding upon the theory that there was only one movement of that train one time under that reciprocal agreement; no return movement. (Tes. p. 480B.) There is nothing there that the return movement should be taken into account.

[fol. 2012] "Mr. Alston: We object to this exhibit because it is based upon a theory or presumption that is wholly impossible. It is based upon—the item which it is based upon, or the theory it is based upon is a movement of the train for 119 miles at a rate of $1.50 per mile and it would leave the cars and locomotive down at the other end of the line and does not provide for the return of the locomotive and cars. Item one is based upon the out of pocket expense which is taken from item two of Exhibit 73-A which is incorrect. Item three is for the rental of the locomotive for one day. The conditions are wholly inapplicable to the circumstances of the movement under the inquiry. Item four is running repairs at 30 per cent of the system rate which is another condition that is wholly inapplicable to the present circumstances, and of course, the running repairs are not the only ones to which the engine is subject in this service. Number five is for the rental of 40 cars at one dollar per day which is not applicable to the matter under inquiry. Item number six is the total repairs and actual cost to the Wilson Cypress Company. That item covers only the repairs which are done at the cost of the Wilson Cypress Company, apparently. It does not deal with the repairs which are done by the Railroad Company and must be done by them. Item number seven is for switching at Terminal of 40 cars at thirty cents, which is a wholly inadequate charge. The exhibit, as a whole, is based upon a plan which is utterly impossible, under the conduct of business here with the Wilson Cypress

Company. It takes no account of the common law liability of a Railroad Company. It is based upon one movement."

"Mr. Adair: If the Court please, this reciprocal agree-[fol. 2013] ment upon which 75-A is based was produced by the Atlantic Coast Line. We asked them to produce all documents and all information they had with reference to the rental of equipment and the rental of cars, and our adversaries offered to produce what information they had without subjecting us to the difficulty and worry of summoning all of the officials. They were very nice about it, and we appreciate it. Now if there are any more documents, data, tariffs or agreements of the Atlantic Coast Line with respect to the rental of equipment I want them, because I understood they were going to send it. This Sugar Company contract and the Brooks-Scanlon contract were sent. This is a calculation without return movement, and there is not a word said about the return movement. If there was an intersection of the Seaboard or G. S. & F. Railroad and the Atlantic Coast Line at Hines and another at Palatka, and they brought this log train to the Atlantic Coast Line and asked them to move a single movement one time, whether emergency or otherwise, I don't see how the Atlantic Coast Line could refuse to move it on that basis and charge what they have got in this statement. If they moved back the empties, they would have a right to charge the same thing, but if they came back on the Seaboard or some other railroad line, I don't say they would. If there are any other tariffs or agreements in respect to equipment that the Railroad Company has, I would like to have them."

"Mr. Alston: Let me further illustrate how extravagant this exhibit is and its inapplicability to this; under that plan and on those bases the car would be left at Palatka and the next day you would want it at Hines. Under item number, right after item nine, it says $9.71 per car for one movement. That item alone, if it included the return movement [fol. 2014] would become $19.42. There is nothing that can more accurately illustrate what I have said about this reciprocal contract."

By the Court:

(Witness continuing:) I have a switching charge here of thirty cents for switching at terminal. That charge has been applied to both switching before the train starts and

when it reaches its destination. The idea I was going on is that the 30 cents switching charge is a necessary expense of the switch engine distinct from the road engine that takes the train in the beginning. The evidence yesterday showed that the road engine took the train from Hines and at certain other points, but when it reached the mill, as at Palatka, the railroad would furnish a switch engine at that point, and this thirty cents covers the switching by the switch engine. All the switching by the road engine is included in the out of pocket cost.

"Q. Does that include switching at both ends? You said here "switching at Terminal" in your Exhibit 75-A, and in 72-A you have got switching of 1051 cars at thirty cents a car?"

"A. Exhibit 75-A would be the Palatka end. You might say one switching per train."

"Q. That included both ends?"

"A. One end. The road engine does it at the beginning and the switch engine at the other end."

(Redirect examination continued by Mr. Adair:)

I have 1051 cars; that means I gave credit of 30 cents per car for the empties as well as the loaded cars. I did not include anything for switching at Hines because the road engine does all the switching at that point. The one I covered is at Palatka. I heard the testimony of Mac- [fol. 2015] Pherson and Baptist. The switching that I understand was done at Hines was only pick up of the train. There was a movement of the empties on to the track when the empties returned. That was all done by the road engine and would be included in the out of pocket expense. There was not a cut up of the train by the Railroad Company at Hines. I have prepared Exhibit 76-A in connection with the log traffic. This Exhibit has been set up in exactly the same form of Lamb's Exhibit 12, which shows an estimate of the cost of handling of logs from Hines to Palatka based on the third division average that he testified to. In preparing this exhibit, the first eight lines are exactly as shown on Lamb's exhibit. Line two shows it as he computed it. Line three shows the billing weight, etc. On line nine I have shown the out of pocket expenses per gross ton mile which I developed in my Exhibit 70-A. That was .043002 per gross ton mile. In line 10 I have expanded the gross

ton mile by the percentage used by Lamb which is shown in a note at the bottom of of the Exhibit, column A, total freight haulage expenses only; and column B, total (Tes. p. 485B) freight expenses. In calculating the taxes and return on investment I have used the same percentage that Lamb used without agreeing to the correctness. I am doing this for comparison, arriving at a total cost on line 16 of $19.44 per car. There is some danger in relying on the system cost of figures entirely. In Lamb's original Exhibit 12, he did not use the actual out of pocket cost that was applicable to this Hines to Palatka movement, but in my Exhibit 76-A I used it. Lamb's Exhibit, being based on the Third Division cost, is not applicable directly to [fol. 2016] the log movement such as I used here. The principal difference between my Exhibit 76-A and Lamb's Exhibit lies only in the out of pocket cost shown in line 9. The out of pocket cost that I used is dependent upon the actual movement from Hines to Palatka. The out of pocket cost used by Lamb is dependent on the calculation of the out of pocket cost of the Third Division of the average cost of all traffic.

By Mr. Alston:

Yes, I got my out of pocket cost which is used in my Exhibit 76-A from my Exhibit 70-A. The last line of Exhibit 70-A shows the correct cost per thousand gross ton miles. It was figured out and adopted in my calculations in Exhibit 76-A. Yes, the correctness of this out of pocket cost per gross ton mile of .043002 is dependent upon the correctness of my Exhibit 70-A.

By Mr. Adair:

I have made a study in respect to the out of pocket cost of the movement of logs or log trains to the City of Lacoochee, Florida, and I have a statement which shows the out of pocket cost from Homosassa to Lacoochee in May, 1929. This statement headed "Atlantic Coast Line Railroad Company, statement showing consist of log trains operated between Homosassa, Florida, and Lacoochee, Florida, for the month of May, 1929" is the statement upon which my exhibit was founded in so far as the details are shown on that statement. I have had this statement and analysis and have prepared an exhibit in relation to the cost.

"Q. I now offer this statement in evidence, identified by the witness, which will be Claimants' Exhibit 77-A. This was produced by the Atlantic Coast Line, or furnished us by the Atlantic Coast Line, and in offering it we do not [fol. 2017] vouch for its accuracy, but it was data furnished us by them. Now, Mr. Saunders, please produce the exhibit that you have prepared in respect to the Homosassa and Lacoochee movement and tell us what the exhibit is generally, and then in respect to the several items shown on it. This will be exhibit 77-A, and the one prepared by Mr. Saunders will be Claimants' Exhibit 78-A."

"A. There are several reasons why this particular statement of cost, the one produced by the Atlantic Coast Line Railroad in respect to the Lacoochee movement, exhibit 77-A, is not representative of the movement of logs in Florida. Exhibit 77-A contains 54 loaded cars and 72 empty cars designated as "other logs". The exhibit also contains 17 loaded cars in other freight service and 51 cars empty in other freight service, among those being 10 cars of the company's material, one car of tomatoes, one car of melons and four cars of machinery. I took this statement of cost, particularly the out of pocket expenses shown at the bottom of Exhibit 77-A and analyzed them in the manner similar to the analyses which are presented in my Exhibit 70-A in regard to the Hines to Palatka movement. That is, I reduced the wage item to a total of $336.66; I reduced the engineer and fireman to $372.17. Trainman number 401, I reduced to $463.75. I based the wages on calculations of eight hour service for 27 trips. That run is only 69 miles and it would be a poor railroad to occupy the entire eight hours on that 69 miles. However, I made it on an average rate of paying for the full eight hours, each movement. After making adjustments I find that the total out of pocket expense was $1,298.23, which I applied in the form of an exhibit which is exactly similar to the [fol. 2018] exhibit 72-A where I analyzed the Hines to Palatka movement.

Exhibit 78-A estimate is in the manner described for Exhibit 72-A, that is, under the six cents per car mile for loaded cars and rental of locomotive on one mill per pound of tractive effort. The six mill per car mile for car rental and repair item produced a total of $84,871.99. The switching item has been purposely omitted from this statement

because there wasn't any switching except that done by the road engine which would be covered in the cost shown on lines one and two. Under the Cummer scale the revenue for this movement would be $5,003.75, and under the I. C. C. scale the revenue would be $10,093.25. In both cases I have included $668.25 as estimated revenue from its other freight. That figure was based upon an estimated average revenue per ton for movement of similar commodities. The estimated cost of a car in Exhibit 78-A would be $12.30. The revenue under the Cummer scale per car would be $12.64. The revenue actually received under the I. C. C. scale per car was $25.49, and it should be noted that the estimated cost per car is approximately one half of the revenue actually received under the I. C. C. scale. The elements of profit are in there as described in Exhibit 72-A. The rental item includes an element of profit. The trackage item included a profit. I included the locomotive rental for the full 30 days in May, 1929, based on one mill per pound of tractive effort of 33,700 pounds representing the tractive force of this particular locomotive in this service. This item of $12.30 is relatively high because it contained an element of cost that was not representative of full train load movement. For instance, the trains were only 33 car average. There (Tes. P. 490B) were cars of other freight included which would make it relatively high.

[fol. 2019] I have prepared an exhibit showing the operating expenses for the road as a whole. This will be claimants' Exhibit 79-A. This exhibit consists of four sheets and carries the Atlantic Coast Line Railroad Company's operating expenses for three years, to wit: 1929, 1930 and 1931. I have reduced it to an average basis. In column five I have the weighed average freight operating expenses based on the time the expenses were incurred in the service under investigation. The 1929 expense was figured from February 8, 1929, and ended with that year. In 1930 it was for a full year, and 1931 expenses were from January 1, to March 5, 1931. Reduced to a percentage, I used 43.3 per cent for 1929. For 1930 it was 48.2 per cent, and 8.5 per cent for 1931. The whole year 1930 was involved. The next step in developing this exhibit was to eliminate accounts which were not directly applicable to line haul expense. I have eliminated account 241, wharves and docks; account 273, 'Assessments for Public Improvements, and

also portions of accounts 201, 274, 275 and 276 as not being applicable to this line haul. In totaling them I found that the weighted average operating expenses for the system for the year applicable to the line haul was $6,100,447.00—no, the operating expenses and maintenance applicable to line haul was within $6,100,447.00. I can refer you to sheet four. I better start with sheet two. In column five opposite total maintenance expense, is $6,274,958. Now under the freight operating expenses of the Atlantic Coast Line on weight basis for those three years, after eliminating the accounts I described, I found that $6,100,447.00 would remain. Now there is $4,235,834.00 or 69.4 per cent which is directly assigned to line haul, that is, expenses assigned to line haul, other expenses being directly assigned. There is also $672,050.00 directly assigned to yard expenses. Roadway Maintenance-Yard, there is $672,050.00 in column five directly assigned to yard expenses. Now that gives the relation between directly assigned cost of 86.3 per cent line haul expenses and 13.7 per cent for yard expenses. Remaining in the Maintenance of Way and Structure block [fol. 2020] there is $1,192,563.00 which is not directly assigned to either yard or line haul. Now I have proportioned that on the same basis which have been directly assigned. On sheet four of the exhibit under transportation there is $12,148,116.00. After eliminating the so-called inapplicable accounts, $6,331,052.00 is definitely assigned to line haul. We get that by totaling the items such as out of pocket expenses, which began with 392, $1,483,391.00 shown on column five of sheet three, and similar items that are designated as train items. There is also $3,641,399.00 definitely assigned to yard expense. Those, for instance, would be items such as account 377 on sheet three, yard master and clerk, $845,383.00. The relative proportion of those definitely assigned is 63.5 for line haul, and 36.5 for yard expense. The remaining items on the transportation block which are not assigned to either train or yard service constitut- $2,175,665.00, which I have apportioned on this basis previously determined of 63.5 to line haul and 36.5 yard expenses. I totaled the operating expenses shown on sheet four of $34,353,062.00. The figure zero indicates entire elimination to either yard account, line haul or to the log traffic. I didn't consider wharves and docks applicable to the log traffic, and the assessments of public improvements,

superintendence and the like. Now in line seven I show the total system line haul expense. I am assuming that the logs did not move in less than car load amounts. Now the out of pocket cost on sheet three begins with 392 and ends with 402, total of $6,443,134.00, and my total line haul expense shown in column seven on sheet four, less that item, totals $20,432,664.00. In column eight I allocated the line haul expense as far as possible to the State of Florida, and in that connection I have another exhibit which I might offer at this time.

[fol. 2021] This will be Exhibit 80-A. The last column of Exhibit 79-A contains an estimate of the operating expenses applicable to Florida during this average period from February, 1929, to May, 1931, and Exhibit 80-A explains how I allocated the line haul expense to Florida. Column eight on sheet four of 79-A, of $6,043,494, is what I estimated the total freight line haul expense to be for this average period.

Cross-examination.

By Mr. Alston:

"Q. Under column one of this exhibit here, I notice that there are certain numbered accounts missing; have you eliminated all the unnumbered accounts?"

"A. No, sir; the account numbers shown on Exhibit 80-A are the same account numbers that are shown on Exhibit 79-A except their order has been changed. The eliminations are shown by zero in column 8 of 79-A. I grouped them in 80-A because they are accounts I applied in similar manner."

I grouped together the accounts I handled in the same way notwithstanding that I destroyed the consecutive and numerical order of the numbers; that was for convenience and description. The fact that an account is missing in number between any of those accounts does not mean that the account has been eliminated; this theory of allocating expenses to freight is that expenses will vary in some instances with the car miles, and in some instances with the ton miles, and in some instances the cost of the property itself and other basis which I have set up here. Those are the only accounts I have grouped together. Exhibit 80-A is largely self-explanatory in that it sets out the exact

method of weighting which was used in producing the figures in column eight in Exhibit 79-A. Now in Exhibit 79-A, when this allocation is completed, I find my total line [fol. 2022] haul expense assignable to Florida of $6,043,494.00; that is 29.58 per cent of the total system line haul expense which was $20,432,664.00. That is shown in column seven of Exhibit 79-A on page four. The exhibit shows the revenue for Florida. The annual report shows this too. There was a weighted average on this same basis for this same period of 17,471,642 revenue tons. For Florida it was 7,921,922 revenue tons. The relation of those revenue tons is 45.34. The system freight for 1930 at the close of the year was $46,428,030.00, and for Florida it was $11,960,371.00. The relation of revenue was only 25.76 after reducing it to the unit cost basis. The unit cost line haul per revenue ton for the system was $1.1695. For Florida it was $0.7010. The one just read was the unit line haul cost per revenue ton. (Tes. p. 495B.) The percentage of Florida revenue tons to the system was 45.34 per cent. The Florida revenue was 25.76 per cent of the system revenue. Now the unit cost system line haul per revenue ton was $1.1695. For Florida it was $0.7010.

Redirect examination.

By Mr. Adair:

"Q. Now Mr. Saunders, you have been discussing the average line haul cost per revenue ton for the system and for Florida and their relationship. What I understand this to mean is the relative cost of transportation in Florida and other parts over the system of the Atlantic Coast Line Railroad?"

"A. The average haul for the Atlantic Coast Line System in 1930 was 171 miles. That was on freight. The average haul in Florida on freight was 99 miles. That is a big factor that enters into the unit cost. In addition to that we have eliminated the [terminal expenses which cover the [fol. 2023] major part of the pick-up charge or items of expenses of that nature which make the freight business in Florida very expensive. We have left here only the comparison unit which is compared with the line haul cost itself.

I have prepared an exhibit showing the unit of line haul expense assigned to the log traffic. This is Claimants'

Exhibit 81-A. At the outset I want to say that in my opinion it is impractical to assign to a particular commodity the exact amount of cost. However, in all the line haul expense assignable to the State of Florida in which this service is included, I have made an attempt to assign, as far as possible, this expense which I recognize is an arbitrary basis, but it is my opinion that this assignment is reasonably close. I took from Exhibit 79-A the operating expenses assignable to each group of accounts, that is, Maintenance of Way and Structure and Maintenance of Equipment and Transportation. I have shown those expenses in column number two of Exhibit 81-A. The first adjustment made is shown in column three where I have assigned the expenses on the revenue ton mile basis, that is, the revenue ton mile of logs bears to the total revenue ton mile in the system is 3.18, that is, there was 3.18 revenue ton miles of logs out of the total traffic in Florida. I got that revenue ton mile of logs from the tons of revenue freight as reported to the Commission. The ton mile log freight is based on 81.36 as an average haul. The 81.36 miles is the average haul of logs covered in the period from February, 1929, to May, 1931. That is the Lamb figure. This estimate in line three places the line haul cost of the log traffic on the same basis per unit as all traffic. Now the adjustments shown in columns four and five are each explained in remarks in column seven. The track accounts under head of Maintenance of Way and Structure have [fol. 2024] been considered as applicable to the extent of seventy-five per cent. The structure accounts which are buildings, have been considered as applicable to the log traffic to the extent of 25 per cent. Under head of Maintenance of Equipment the first percentage of 60 per cent was applied to all accounts. This being due to the nature of equipment used, and then 50 per cent was applied due to the fact that the Lumber Company has made such a large percentage of repairs to the log cars. Under head of traffic it was considered the ten per cent was applied to logs. Under the general head of Transportation I have taken the out-of-pocket cost, that is, 392 to 402, on the cost per mile, per car mile basis, that was obtained from this section from Hines to Palatka. That was shown in Exhibit 70-A. The maintenance cost under transportation was apportioned on a basis of 50 per cent. Then I went back and brought into the accounts the stationery and office expense

and the like, and that is something that has been eliminated. I considered that both of those would be assigned to the log traffic and have included the amount on a basis of 25 per cent of the total. The total operating expense assigned to the log traffic in Florida for an average year was $102,046.00. The adjustments I made all were conservative and I have not been able to secure sufficient information to make final adjustments. If the record was obtainable so we could find out the per unit cost of what the log traffic is, I am sure it is lower than I have got here. I did not eliminate matters that I was not certain of. I have departed from the Interstate Commerce basis; I am not using their form at all. The Interstate Commerce Commission dealt with the system average.

"Q. Your system average, was it in respect to the log traffic or all commodities?"

"A. All commodities."

[fol. 2025] Recross examination.

By Mr. Alston:

"Q. In your calculations you used the figure .43002, and Lamb used the figure .0882888¢ per gross miles?"

"A. I did at one stage of my testimony, but the exhibit we are talking about has not got anything to do with this group exhibit."

"Q. The Interstate Commerce Commission found that the cost of transportation in Florida was very much more than the cost of transportation out of Florida, and you just reversed that?"

"A. No, sir.

"Q. You found the cost of transportation in Florida to be less than the cost on the system out of Florida?"

"A. No, sir."

"Q. Is that what you did?"

"A. No, sir."

"Q. Have you got it the same, less or more, or what?"

"A. I have made no determination of the unit cost per ton mile in Florida as compared with that out of Florida."

Redirect examination.

By Mr. Adair:

I have prepared an exhibit showing the average revenue for the log traffic in Florida for 1930 and 1931. That will

be Exhibit 82-A. This estimate covers the same period previous, from (Tes. p. 500B) February, 1929, to March, 1931. In my Exhibit 81-A I developed the operating expenses for the log traffic at $102,046.00. Considering that as operating expenses assignable to all accounts of this log traffic and applicable to the line haul, after adding thereto the estimate of terminal and switching expenses at thirty cents per car for the average loaded and empty car handled for this average year, that gives a total operating expense of $108,470.00. Now this cost has in it every-[fol. 2026] thing except items such as taxes and return on investment which the carrier would secure from the revenue received during the year. I have taken the operating expenses and to it I applied the system operating ratio of 76.76 per cent which was an average over three years. This application of the ratio gave me a corresponding figure which would include all expenses, taxes and everything and gave a fair return on the traffic received for the year in comparison with the return received for all traffic on the Atlantic Coast Line Railroad. For 10,706 cars carried in this year the average per car would be $13.19, and the revenue which would have been received for the 306,683 tons hauled the distance of 81.36 miles during the period would have been $139,694.00, or $13.05 per car. Under the I. C. C. scale that would have produced a revenue of $334,051.00, or $31.20 per car.

Recross examination.

By Mr. Alston:

Item one, operating expenses, are those which were taken from the previous exhibit exactly in the manner I stated. Item two, Terminal and Switching expenses, was ascertained by multiplying 21,412 loaded and empty cars by thirty cents per car. That is the only terminal and switching expenses I included on both the loaded and empty cars. Those added together make item three, of $108,-470.00. By item four which reads: "Application of average of 1929-1931 operating ratio 76.78 per cent to above to obtain revenue corresponding to average revenue received by carrier 1929-1931, which net all expenses, taxes, equipment, etc.," I mean that in this average year under the system operating ratio the relation of revenue to expenses was

76.76 per cent. I do not mean the calendar year 1929; I mean the same average from February, 1929, to March, 1931. That gives the average year that I am trying to [fol. 2027] use. I built this average year up out of that period. The expenses and cars and everything was an average year.

"Q. How did you apply that 76.76? Have you applied that to the above to obtain the revenue corresponding to the average revenue received by the carrier in 1931? You applied it to what?"

"A. To this $108,470.00. I will explain it this way: I have used the average operating expenses for this year, and I applied to it 76.76 per cent. What I am trying to get is an average revenue on the system, and I applied this system operation ratio of 76.76 per cent to $108,470.00, divided the $108,470.00 by 76.76 which gave me one per cent and I multiplied that by 100 which gave me a 100 per cent, or $141,310.00."

"Q. Now is that based on the theory that the cost in Florida was more or less, or the same over the system?"

"A. That question did not enter into it at all because all I am trying to obtain for the Florida log traffic is the same average return you receive for all traffic on the system as a whole. I am not trying to burden any particular section. I am trying to put a fair average to all log traffic."

I don't know whether thr result is the same on the tonnage mile basis in Florida as the other states; that did not enter into my calculations at all. I will say this, that the operating expenses of logs are lower, therefore the ton mile revenue would be lower compared with ton mile revenue of all traffic, it would be lower than the average. I mean that the ton mile revenue on logs is lower as I have used it. If I were to perform this service out of Florida I would get a different result. I would get a different result anywhere I applied it. If I were to do it in Virginia, I would have to use a different approach than I have here. [fol. 2028] I would have a different figure all the way through to get my cost in Virginia. I don't know whether the result would be more or less; I haven't investigated Virginia. I can't tell you without making calculations, whether it would or not.

Redirect examination.

By Mr. Adair:

This 10,706 cars are car loads of freight. The calculations here I used contained a 100 per cent return empty movement. It is customary for them all to go back empty. It might be as high as 98 per cent, but I have used a 100 per cent. This exhibit 82-A would be composite of all traffic, single cars and trainloads. The reason why the log traffic is less expensive than the average traffic on the Atlantic Coast Line Railroad in Florida because the distance haul is less. The source of business is more confined than the average period covered by such business as fruit and vegetable traffic. A great deal of the other traffic in Florida is pick up service in connection with the fruit and vegetable traffic. The cost of traffic on logs, as it relates to the placing of empty cars, would be less because where the movement is in trainload movements, the empties are all brought in in one cut. Now, on other form of traffic the placing of empties is expensive because the placing of——

(Objection by Mr. Alston that the witness is not testifying to facts within his own knowledge.) (Tes. p. 505B.)

The fruit and vegetable traffic requires refrigeration cars which are more expensive than the handling of flat cars used in the log service, and the schedule on which the log train moves is simple when compared with the schedule [fol. 2029] of some of the fast shipments of fruit and vegetables. Traffic, such as machinery, that is handled and covered by large loss and damage claims is much more expensive, or a much more expensive type of traffic than in the log traffic where it *is* practically negative. In figuring the cost of traffic I found that the heavy loaded cars produce a lower unit cost than the basis of light loaded cars which comprise the average traffic.

The use of average cost of all commodities is dangerous to the extent we depart from the average. The ascertainment of the exact cost of any commodity is impossible by any method with which I am familiar. It could not be shown accurately by the average cost. It is true that anything that gets off the average could not be accurately shown by the average cost. I have prepared an exhibit which is designed to illustrate what I have to say in that connection.

This is Claimants' Exhibit 83-A. In column one of this exhibit I show the groups of commodities. In columns two and three I show the tonnage. In column three I show the Florida tons, and in columns four and five I show the percentage which the various group of commodities bear to the total on this tonnage basis. The system products of mines is 34.7 per cent. The Florida products of mines consist of 49.5 per cent of the total. Manufacturers and miscellaneous is 25 per cent. In Florida it is only 18.2 per cent. The revenue per ton for those products vary in similar manner; for instance, the products of agriculture is nearly 30 times that of the revenue for log traffic. I do not believe that it is possible to directly allocate, separately, the expenses to specific commodities, or to a specific commodity, such as logs, because the effect of a commodity directly on the expenses is almost impossible of ascertainment. I can illustrate this by taking account 202, Roadway [fol. 2030] Maintenance, and 220, Track Laying and Surfacing. The fact that the line is maintained for high speed traffic would have more influence on assigning those accounts to commodities than the nature of the commodity itself. In other words, the passenger line of the Atlantic Coast Line would be maintained to a higher degree than the lines that handles the log traffic only. With reference to the repairs in the log traffic, the evidence that I have listened to indicated that the lumber company did most of the repairs outside of where there would be a mainline wreck, and that would reduce——

(Objection by Mr. Alston.)

I heard MacPherson testify about the percentage of the car repairs which the Company had made; he said they made substantially all the repairs. I heard the representative of the Cummer Cypress Company testimony on the same subject. That is what I refer to in respect to the portion of repairs that were made to the cars. I also heard the statement of the cost which I compared to the average cost of repairs. They were filed in evidence in this cause. My opinion is that the repairs on the type of equipment used in the log services would carry a much less pro rata share than the type of equipment which would be used in the faster service employed for the fruit and vegetable traffic. The reason for that would be the increased use of the locomotive per car and per ton. With respect to

such accounts as injuries to person, insurance and stationery and the like, if it could be properly assigned and the correct proportion could be placed or assigned to the log traffic, I would say that the proportion borne by the log traffic would be small. In my averages those were lumped in with the other car mile expenses and so forth. The out of pocket expenses which are trainmen, wages, fuel cost [fol. 2031] and supply cost, represent .373 per cent of the total system out of pocket expense. The average for all other accounts is .558 per cent. I believe that the transportation expenses as a whole should be reduced somewhat in relation to this lower percentage. The out of pocket expenses themselves when related to the whole system out of pocket expense is .373 per cent, that is, the out of pocket expense for the log traffic. That calculation being based on the Palatka unit cost. The .415 and all other log expenses compared to all other operating expenses is .558 per cent, which shows all other operating expenses are proportionately high.

The expenses of the general office and other expenses of a general nature could not be allocated on any correct mileage or tonnage basis because of the nature of the service rendered by the officials and the expense. However, the log traffic should take a very minimum part of this type of expense, because it is insignificant, or because of its insignificant proportion to the whole traffic, and also due to it being easily handled compared with the more difficult handling of other commodities.

"Q. From your examination of the log traffic from the source to which you have testified here, have you been able to form an opinion as to that traffic under the Cummer scale during the period when the Cummer scale operated while the Brooks-Scanlon Movement was going on?"

"A. I believe if it was possible for us to secure all the necessary information to make this calculation perfect, and I do not claim that my calculation is perfect, I am only giving a conservative estimate, but if we could do that (Tes. p. 510B) we would find that the Cummer scale was producing a revenue which would meet all expenses and cover taxes and give a fair return on the property."

[fol. 2032] I am familiar with and have reviewed the report and opinion of the Interstate Commerce Commission

dated July 5, 1932, in the case of the Georgia Public Service Commission against the Atlantic Coast Line Railroad. This Appendix E to that decision does not purport to develop the cost any more than the system average basis. The gross ton miles under the unit cost obtained are all reduced to the system average of all commodities. The average of loading of cars for the system was a great deal less than the average loading of log cars, the tare weight, that is, empty cars. The average load contained in loaded freight cars on the Atlantic Coast Line system was very much less than the average load contained in the log car traffic that they have under consideration here. When I use the term "load" I mean the weight of the load in the car. The tare weight of the car, that is the empty cars, for the system was much greater than the tare weight assumed for the log cars. In applying the system average we are going one way on the load, and another way on the weight of the empty car.

When using the term "cost" in that Appendix E, there is a provision made for the return on investment. The average loading on the Atlantic Coast Line was 18 tons and the average loading assumed for the log cars was something over 28 tons. The average tare weight of the empty cars was about 21 tons on the system and of the log cars it was about 16½. The Commission in this report developed what they called non-haulage cost of $6.46 which under their formula applied to each car regardless of loading. That is, if a car was slightly loaded, it would still carry $6.46. This $6.46 is made up from certain non-haulage expense which includes switching and terminal expenses, as well as other expenses which are not directly assigned to the hauling. They have in there all the terminal [fol. 2033] expenses including terminals such as Jacksonville and Savannah and many points where the large terminals are. That gets into the average and would apply over to this log traffic.

I have prepared a chart with respect to Appendix E of the report of the Interstate Commerce Commission relating to the so-called short log scale which is shown to be in effect in Florida on the Atlantic Coast Line and the Seaboard Air Line Railroad Companies. This will be Claimants' Exhibit 84-A. This chart shows three scales, two of which I have discussed, and the short log scale which is

contained in one of the exhibits filed in this case. The lower scale is the mileage. The left scale is the rate per 100 pounds. I have drawn vertically through the three scales a line which would go to the 81.36 mile point which was the average haul of the Florida log traffic in this period. The average haul or load of 56,754 pounds under the Cummer scale is $13.05 per car. The short log scale was $24.12 per car, and the I. C. C. scale was $31.21 per car. Now the Interstate Commerce Commission report shows that for the average haul of 81.36 miles, and under the same average loading they would reach a total cost per car of $24.69, in which they have included taxes, revenue and all overhead expenses. I am talking about Appendix E of the report, and I am referring to page 192 and 186 of the report. That makes provision for a return upon the investment and taxes. That figure $24.69 is based upon the average cost of handling of freight on the Atlantic Coast Line system. That rate includes 5.75 per cent on the investment. The Commission rate of $31.26 per car is 26 per cent higher than the rate they developed in the report for the average cost of all traffic. In other words, they are applying to the log traffic in Florida a cost of 26 per cent higher than they get for the average cost per car for all traffic on the system. [fol. 2034] I have made calculations at 49.8 miles with reference to the relative level of the Cummer scale and the I. C. C. scale and the short log scale. The same basis used by the Commission would be $18.46, on the Commission's basis in their formula. Under the Cummer scale the rate would be $11.24 per car. Under the short log scale it would be $17.39, and under the I. C. C. scale it would be $24.08. I also made a basis of 105.8 miles, which gave under the Commission's formula, $29.65; on the Cummer scale, $16.60 per car, and on the short log scale, $27.40 per car, and on the I. C. C. scale, $38.55 per car. Now 49.8 miles was the average distance that the log cars were hauled which were moved in less than in trainload quantities. 105.8 miles was the average distance the log cars would or did move in trainload quantities.

"Mr. Adair: On behalf of the several claimants I offer in evidence all of the various exhibits identified by the witness, Saunders, under the numbers respectively placed upon them referred to in the testimony."

"Court: Mr. Alston made some specific objections at the time they were offered and we will just consider those objections in the record."

"Mr. Alston: This witness' testimony is very technical and we have not had time to study the record nor the witness' testimony and it will be necessary for us to study the record in order to examine the witness. We would like to defer the cross-examination until the next meeting.

"Mr. Adair: We have no objection but we would like to settle now upon a date."

"Mr. Alston: I will ask him a few questions at this time."

[fol. 2035] Recross examination.

By Mr. Alston:

"Q. Now if I understand the basis of your figures you have attributed to the Florida operating expenses of the Atlantic Coast Line about half as much as was attributed by Lamb in his exhibit? Am I right about that; about one half?"

"A. I don't know that Lamb actually attributed to Florida any definite amount of expenses except as he obtained it by applying the operating ratio to the revenue. I have not made a comparison with that." (Tes. p. 515B.)

I can't believe it would be that much difference. I do not know how much difference there would be because I haven't made a comparison; I have not made a calculation. If I understand Lamb's exhibit, he has not obtained the line-haul expense in Florida as I have. I arrived at the line haul expense. He arrived at the total operating expenses of the Florida traffic, and the two are distinct. In my exhibit 76-A I used the first eight figures used by Lamb. It is right that in item nine of out of pocket expense per gross ton mile I used the figure .043002, while Lamb used the figure .0882888. The diversion from Lamb's exhibit began with the out of pocket expense. Now this particular exhibit we are talking about now, 76-A, is based on the Hines-Palatka movement and not the Florida operating expenses in any sense of the word. I have made a study of the Florida operating expense; they appear in the

exhibit we have just been talking about, that is, the final exhibit to show the assignment of expenses to the log traffic in Florida, 81-A. Column two of that exhibit also shows the line haul expenses for Florida and the fourth sheet of Exhibit 79-A also shows the Florida line haul expense in total. Now the Interstate Commerce Commission, in its [fol. 2036] report of July, 1932, after stating the method pursued by the Atlantic Coast Line or Lamb, in determining the out of pocket expenses said: "From the foregoing it is apparent that the operating expenses allocated by the defendant to Florida are not actual but constructive expenses, and that they are understated to an unknown extent. In view of this fact, system figures including Florida, which are not in question, may be utilized as the basis for approximating the cost of transporting logs in that state. Ordinarily it would be unsound to use a system unit cost to determine the cost in a particular state, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida."

"Q. In other words, you are contending that Lamb's statement, or the Atlantic Coast Line, to which the Commission refers to here, was itself an over-statement?"

"A. I am not contending anything about Lamb's statement other than I differ from him."

I did arrive at a lessor figure than Lamb did for my total expenses. I can't tell how much less. It is difficult to compare Lamb's Exhibit with mine for the reason he is talking about total expenses and I am talking about line haul.

"Q. You differ with Lamb because apparently you think Lamb's figures were too high, and the Commission to some extent differed because they thought he wasn't high enough, is that right?"

"A. We are talking about two different things. The Commission was talking about operating expenses. I was talking about line haul expenses."

[fol. 2037] My calculations took into account the density of traffic in Florida as compared with the density over other parts of the system. I was very particular to make that one of the points of my allocation, and that will be found in my Exhibit 80-A. I took into account the differ-

ence in the density of traffic on different parts of the system, and I allocated that expense. Any use of the ton mile as a unit takes that into account. Any use of the car mileage takes that into account. The equipment, in many instances, is allocated to the car miles.

"Q. Will you take one of the accounts like 208 or any other account, and let's see about it?"

"A. Under Way and Structures, the first indication I see of taking into account the density of traffic is at the bottom of the page, 225 and 249. One half of the weight was given to relation of freight train miles; that is, if the system freight train miles was greater in proportion than those in Florida, then Florida would secure a like weight in those particular accounts due to the allocation on that basis. The freight train miles on the system are certain figures, and the freight train miles in Florida are certain figures. The relation of that gives the weight to the traffic weight in Florida. If the freight train mile was higher in Florida then there would be more weight assigned to Florida on that account; that is if it was higher in per mile proportion than other parts of the system. I can't say whether it is higher or lower. I can give you what I used on the basis of freight train mile. The relation of the freight train mile in Florida to the system is 28.9 per cent. I mean that the freight train mile in Florida is 28.9 of all the freight train miles on the system."

[fol. 2038] "Q. Now what is the percentage of the mileage in Florida?"

"A. The mileage relation is 37.47."

That would plainly show that the mileage density is lighter in Florida compared with the system in so far as it relates to freight train mileage. Compared to the mileage we had 37.47. Now the ton freight is 45.64. There is more ton per mile in Florida than on the rest of the system. I don't mean that ton mile in Florida is equal to the ton mile of the system. I didn't say that. I said ton per mile. If you divide ton miles by miles, you get tons.

"Q. Now in 1930, the Commission found that the system had 556,771 ton miles, and that Florida had 369,979, and that the system including Florida had 648,399. Is that right?

"A. I am not disagreeing with those figures. They are not the ones I used. We are talking about the car miles here. You have been reading ton miles?"

"Q. Yes."

"A. I don't know whether I used those or not. I have used figures like those in my exhibit, I reckon." (Tes. p. 520B.)

"Q. Don't you know that the main traffic in Florida is less dense?"

"A. Yes."

"Q. In Florida than on other parts of the system?"

"A. Yes, it might be in ton miles."

"Q. Now is there anything in what you have said that differs or challenges this statement on the part of the Commission in its report on page 183: "There appears to be no doubt that the operating costs per unit are generally higher in Florida than the average for the defendant's system as a whole either including or excluding Florida"?

[fol. 2039] "A. That is the total operating cost. I didn't make a finding on the total operating cost."

"Q. You don't take issue on that?"

"A. I have not made an investigation of that part."

"Q. Do you take issue with this: "This is clearly indicated by various things. Using the year 1929 as illustrative, freight traffic density in Florida, expressed in terms of revenue ton miles per mile of road operated, was 62.8 per cent of that for the system including Florida, and 50.4 per cent of that for the system excluding Florida"?

"A. I have not checked those statistics."

"Q. Nothing you have said takes issue with that?"

"A. No, sir."

"Q. Now what about this on page 187; the Commission says: 'The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is that the cost per unit in Florida is higher than the average for the entire road or system including Florida. Another reason why the computation on the basis of average cost per unit for the system understates the cost of transporting logs in Florida is that these average costs per unit do not include anything for joint facility and equipment rents. As heretofore indicated the cost is also understated because it does not include the cost of transporting non-revenue or company freight.' Now do you take issue with that?"

"A. Yes. I think that paragraph is the biggest joke in the whole decision. It is a misstatement of facts. My evidence is incomplete and direct conflict with their findings, and I can't agree with that paragraph."

I went on a different basis than the Commission did. I disagree with that report, but I don't base my conclusion on that disagreement. My conclusion is based upon all the evidence that I have presented. In one of them here I [fol. 2040] analyzed the Hines to Palatka movement under the contract and agreement. The other part is where I analzed the total operating expenses and attempted to allocate this Florida log traffic. The Commission did neither of those things. So I have gone beyond what the Commission did, working with more information than they had possibly, and have reached a different conclusion. I think I have worked with more information than the Commission had before it. I have gone beyond what was got from the files of the Commission. I think there has been evidence in this case that the Commission did not have. I don't think the Commission had this reciprocal agreement; I don't think they had 63-A. There is a cost statement from Homosassa to Lacoochee, Florida, that the Commission did not have. There have been a number of agreements, I can't remember them by number, relating to car rentals and traffic agreements that weren't in the original case. I don't think the Commission was put on notice of all those agreements. I know that 63-A was not referred to in the Commission's report, and I don't believe that 64-A was either.

I did not consider that paragraph of the Commission stating: "We find that the circumstances and conditions surrounding the transportation of these logs intrastate in Florida are not on the whole as favorable as the circumstances and conditions surrounding the interstate movement of logs over defendant's lines." I cannot agree with the statement of the Commission that, "Ordinarly it would be unsound to use a system unit cost to determine the cost in a particular state, but since it is indisputable that unit costs are higher in Florida than elsewhere on the system, it seems clear that system unit costs may be used to find a cost that may be said to be less than the cost in Florida," because they are talking about the system unit costs as a [fol. 2041] whole, and they say it is undisputed. I will use

the same phrase; it is undisputed that the cost of handling this fruit and vegetable traffic, in so far as the cost of terminal and handling charge is concerned, is much more than the handling of the log traffic. This statement, as it stands, might be absolutely correct, and my theory would not clash at all with the Commission. It may be a fact that the total operating expenses are higher in Florida than on any other part of the system, but that does not influence my determination.

I don't think that the premises that the Commission is laying down are well taken. They are talking about total expenses, and they ought to get down to the log traffic. By eliminating the terminal expenses and after making further adjustments I could say exactly what it would cost to haul a car of logs. The Commission worked on a system basis entirely. They eliminated on page 185, the sum of $10,384,360.00, and put back seven million later. If you will turn to page 196 there is a little table at the bottom of the page that shows $24,643,384.00 of haulage expenses. That seven million figure is the basis of the $6.42 shown on page 197 that they called the average non-haulage expenses per car. The only amount that the Commission eliminated was $2,555,778.00. (Tes. p. 525B.)

By Mr. Lamb:

"Q. Your Exhibit 80-A shows in most cases the figures in percentages very clearly, but with respect to accounts 208 and 218 one of the basis is the relation of cost reproduction new as of June 30, 1917; will you kindly give me the freight percentage."

"A. 15.61 per cent."

"Q. That is the freight percentage of June, 1917?"

[fol. 2042] "A. That was for account 208."

In other words the percentage is shown in the lower section under column two. The next block account 13, 16, 17, 26 and 35, the percentage shown in the next column, is the Florida percentage as developed in the cost reproduction new in Florida, June, 1917. That applies to 15 and 17 on that page.

By Mr. Alston:

"Q. Now, Mr. Saunders, beginning at the bottom of page 178 of the 186 I. C. C. it reads: 'The defendant did not

present the figure $34.30 per car as representing the actual cost of the service, but stated that it was greater than the cost because it included certain expenses which were not attributable to the handling of logs. Defendant also presented another figure, $25.23 per car, based on the ratio of system out of pocket expenses to total system freight operating expenses after many deductions were made from the latter. They were deducted, first, all freight yard accounts, 42 in all, the total of which aggregated $4,550,039. Then all accounts in 15 other accounts, aggregating $4,665,936, were completely eliminated. Many of these were obviously not directly attributable to the handling of logs, such as wharves and docks, paving, assessments for public improvements, floating equipment, outside agencies, advertising, traffic associations, and industrial and immigration bureaus. Some of the others were clearly attributable, at least in part, to the handling of logs but were entirely omitted because of the difficulty of ascertaining the proper proportion that should be allocated to that traffic. For example, station employees in the transportation block of expenses, account 373, shows charges to freight of $3,281,-[fol. 2043] 352.20. There would seem to be no doubt that a portion of the charges to this account is properly attributable to the handling of logs. To this account are charged agents, clerks, and attendants, telegraph and telephone operators, station agents, etc., who handle the billing of log shipments and perform other services. But that account was entirely eliminated. Finally there was eliminated 4.4897 per cent of general expenses, amounting to $413,-769.00. The grand total thus eliminated aggregated $9,-627,744.00.' That was done by the defendant, or by Lamb, in ascertaining those expenses for average haul and other haul; that was what he was talking about, you recognize that?"

"A. If I remember those amounts stated were relating to system allocation of operating expenses."

"Q. And those eliminations were made from the system operating expenses so as to eliminate all things which did not apply to logs?"

"A. This wasn't the Commission's allocation; this was made by the carrier."

"Q. But the Commission found that he had thrown aside too much?"

"A. Yes, sir."

"Q. That he had eliminated too much? You understand that to be so?"

"A. I think the report will speak for itself. The Commission included 25 per cent for employees; I did that myself."

By Mr. Gutheim:

"Q. I want you to look at Exhibit 76-A while I read to you from pages 182 and 183 of the Commission's last report in the 186 I. C. C., the same one that Mr. Alston read from: 'The unit cost figure of .0882888 per cent per gross ton mile was admitted by the defendant to represent merely the average out of pocket expense of handling all traffic [fol. 2044] on the Third Division. It can not, therefore, be accepted as indicating the average out of pocket cost to defendant of transporting logs in Florida. It appears that nearly 25 per cent of the traffic moving in Florida consists of fruits and vegetables which require special and costly service. The cost of such service enters into the average out of pocket cost of the third division and would apparently tend to make it higher than the actual out of pocket cost of the log traffic. The conclusion seems to follow that the average cost figure of .0882888 cents per gross ton mile is higher than the actual out of pocket cost of the Florida log traffic.' Did you take that statement of the Commission's report into consideration in compiling this Exhibit 76-A?"

"A. Yes, sir; I was aware of that, and that was one reason why I thought it was best to carry through this out of pocket expense per gross ton mile which was based on the actual log traffic, rather than the system average."

This figure of .0882888 in the Commission's report was the figure in Lamb's exhibit which I refused to use. That was the system average figure. For that I substituted .043022; this last figure is taken from my Exhibit 70-A. Looking at the same report of the Commission in the tabulation at the bottom of the page 181, the Commission, in their consideration of that Hines to Palatka cost study, gave no consideration to the account for train enginemen and fuel for train locomotive which I take into consideration in my Exhibit 70-A. I think my analysis has gone a little further than the Commission did on that phase of it.

[fol. 2045] T. M. TRUE, recalled by the claimants, testified as follows:

Redirect examination.

By Mr. Ashby:

I have testified in this case several times. I can state where those various branches or divisions, mentioned in Claimants' Exhibit 65-A, which is a tariff of the L. & N. Railroad providing for an offer of trackage agreement for the operation of log trains over the Alabama and Florida Division, Florella Lakewood Branch, the Southern Alabama Division and other branches of that railroad, are located on the L. & N. Railroad. I have prepared a map of the L. & N. Railroad Company and have shown in colored crayon the different divisions or branches as indicated in Exhibit 65-A. (Tes. p. 530B.) I offer this in evidence as Claimants' Exhibit 85-A. The colored portions of that map are the portions of the line of the L. & N. over which the trackage contract would operate.

The distance over the Alabama and Florida Division, indicated by the blue crayon is 100 miles. Four miles over the Lakewood Branch, while the distance over the Southern Alabama Division indicated by the hillotrope crayon is 170 miles; Camden Branch is 40 miles, and the Myrtlewood Branch 61 miles, a total of 587 miles. With reference to Claimants' Exhibit 65-A, which shows this offer of agreement for trackage rights, I can state that I know that the same offer was effective prior to the date shown by this tariff, that is, June 15, 1931. This same rate as published in the L. & N. I. C. C. A-16072, designated in Exhibit 65-A, was formerly in effect in the I. C. C. A-15271, which governed prior to the effective date of I. C. C. A-16072. The I. C. C. A-15271 went back to 1923. All the tariffs provided by that Exhibit 65-A were in effect all during the period involved. The short log scale rate has been in effect in Florida since 1916. It has a general application on all railroads and particularly on the Atlantic Coast Line.

[fol. 2046] The rates on logs, pine, gum and cypress, not over six feet in length, per car of 40,000 pounds, excess in proportion, for a distance of all the way up to 400 miles, were published in the Atlantic Coast Line freight log tariff, Number 11, G. F. O., Number 8, tariff number 4292, effec-

tive November 1, 1916. That is the so-called short log scale which has been testified about. It is in effect at the present time. The only difference being the rates since 1916 have been subject to a 25 per cent increase and one ten per cent reduction. Those were two general increases, one in 1918 and one in 1920, and a general ten per cent reduction in 1922, which was applicable to all freight. For instance, the rate in 1916 for the minimum distance was $6.00 per car, while the present rate is $8.55 per car. Now that $6.00 rate was increased 25 per cent on June 25, 1918, in the general freight increase. That became $7.50; in August 26, 1920; when a further increase of 25 per cent was made it became $9.50 per car, and then there was a reduction on the rate down to $8.58, which is the present rate. That rate is applicable to all the various districts, and that scale rate has been in effect since 1916.

Recross-examination.

By Mr. Alston:

There was an exception made to the order of the Commission in 1928 in that it did not apply to the short rate logs; that was after the issue, in one of the amendments. I don't know whether it was made to meet the contention of the Atlantic Coast Line Railroad that it did apply to short logs; I wasn't in the case myself. The maximum distance of the L. & N. Tariff was 50 miles. The effective date of this tariff was June 14, 1931, but the same rate was in effect in 1923 in a former issue. There is a clause in this proposed contract preferring the L. & N. Railroad for the [fol. 2047] outbound movement of those logs."

"Mr. Adair: We now produce, to be marked and identified an agreement entered into March 22, 1926, between the Atlantic Coast Line Railroad Company and the Wilson Cypress Company which appears in the printed record before this Court and the Supreme Court of the United States and in the record before this court and to which the attention of the Master was called, and for convenience of the Master we have had it typewritten and will be marked Claimants' Exhibit 86-A. Also, contract between the Cummer Cypress Company, dated March 20, 1926, and the Atlantic Coast Line Railroad covering the movement from Otter Creek to Lacoochee, Florida, to which the attention

of the Court was called. This will be Claimants' Exhibit 87-A. Now we have photostatic copies of excerpts of pages of the L. & N. Annual Report for 1921 and 1922 which were read in evidence on yesterday. The one for the year 1921 will be marked on the back as well as upon the front, otherwise it cannot be read. Now the next one is for the year 1922, and it will be marked Claimants' Exhibit 89-A.

"We will supply for the record in due course certified photostatic copies of the short log scale at the time it was published by the Seaboard Railroad and the Atlantic Coast Line Railroad in 1916, and copies will be sent our adversaries." (Tes. p. 535B.)

(Thereupon the hearing was adjourned.)

[fol. 2048] TRANSCRIPT OF HEARING

Hearing at Atlanta, Georgia, before Hon. Horace M. Holden, Special Master, as of July 6th, 7th, 8th, 10th and 11th, 1933, and of July 21st and 22nd, 1933.

Present:

For Claimants:

Messrs. Knight, Adair, Cooper & Osborne, (Mr. H. P. Adair and C. G. Ashby, of counsel,) Jacksonville, Florida.

Mr. August G. Gutheim, Washington, D. C., for Cummer Cypress Co. and Wilson Cypress Co.

Messrs. Norman, Quirk & Graham, Louisville, Ky., (Mr. King, of Counsel), for Wilson Lumber Company.

Mr. T. T. Turnbull, Tallahassee, Florida, for State of Florida, on behalf of Log Shippers.

For Defendants:

Messrs. Alston, Alston, Foster & Moise, (Mr. Robt. C. Alston and Mr. Moise, of counsel).

[fol. 2049] D. B. GREEN, being duly sworn for claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is D. B. Green. I am assistant General Freight Agent for the Florida East Coast Railroad and my resi-

dence is in St. Augustine, Florida. The General Freight Agent of my company is Mr. H. E. C. Hawkins. It is my understanding that under your direction a subpoena duces tecum was put on Mr. Hawkins to come up here and bring some papers and testify in this case. The subpoena having been served, you agreed in lieu of his attendance that he might send me along so I am here at the direction of the Court. I know of a Company known as the Osceola Cypress Company, transacting business in the State of Florida on our line. The Company operates at Osceola, Florida, on the Okeechobee Branch of the Florida East Coast Railroad. Our Company has a contract in force with the Osceola Cypress Company respecting the transportation of log trains over our lines. We have had a contract with that company for a good many years. This is a contract and agreement dated May 20, 1919, between the Director General of Railroads and the Florida East Coast Railroad Company on the one hand and the Osceola Cypress Company on the other, having to do with the matter of handling logging trains by the Osceola Cypress Company over certain por- [fol. 2050] tions of the Florida East Coast Railway Company. It is my understanding that the page marked "A" at the top, numbered 1282, was signed, sealed and delivered by the parties. Both parties that appear to have signed this paper for the Florida East Coast Railway Company were dead prior to the time that I went with them in 1926. The signatures appear to be the signatures of these gentlemen, as I have seen them on other papers.

Objection by Mr. Alston.

I have seen facsimiles of Mr. Beckworth's signature many times, and Mr. Ingraham's on a fewer occasions than Mr. Beckworth's, as Mr. Beckworth was in charge of the department where I worked and Mr. Ingraham had charge of a different department. I couldn't say of my own knowledge where this particular copy of a letter dated June 8, 1928 and shown on the next page of the exhibit came from. I have seen this contract before in my office in St. Augustine. I have seen our copy of this contract in our office within the past few months. I have my file on that Osceola contract here. I have in my file a copy of letter dated June 8, 1928, No. 355a, directed to Mr. P. J. Feitner, Osceola, Florida.

Q. Please produce from your file the copy of the letter dated June 8, 1928, No. 355n, and the documents which were attached thereto.

Objection by Mr. Alston that the original has not been accounted for.

The original letter was sent to Mr. Feitner. He is President of the Osceola Cypress Company. I am Assistant Freight Agent of the Florida East Coast Railway Company. That letter was directed by the General Freight Agent to him. (Page 550B of Tes.)

Objection by Mr. Alston that the letter is not before the Court and that the witness is not testifying to matters within his own knowledge.

[fol. 2051] The file from which I produced that letter is an official file of the Florida East Coast Railway Company.

Objection by Mr. Alston.

The copy of the contract for transportation of log trains over our tracks would come under the freight traffic department under the jurisdiction of the General Freight Agent, Mr. Hawkins. That contract, the one Series A which I first identified and this letter dated June 8, 1928, are still in operation.

Objection by Mr. Alston that the contract is not before the Court.

By Mr. Alston:

I became Assistant General Freight Agent of the Florida East Coast Railroad on February 1st, 1927. I went with the Florida East Coast Railway as Chief Clerk to the General Freight Agent on December 1st, 1926. This contract purporting to be dated the 20th day of May, 1919, was made about 7 years before I became connected with the road. Mr. J. P. Beckworth died about 1923. I am not certain as to the exact date. I am not certain when Mr. Ingraham died, but it was prior to the time that I went with the railroad. I do not know Mr. E. L. Hunter and I never saw him sign his name. I do not know the signatures of any of them to the bond attached to this contract.

By Mr. Adair:

Witness (examining letter): I signed the name of Mr. Hawkins there. We have frequent occasions where one of

the officials will dictate mail and has to leave the office on trips and then one of the other officials will sign his name. I did that in this instance. I signed Mr. Hawkins' name to the original letter. It is a common practice in railroad offices for other officials to sign another official's name over the title in such instances. I signed the original and I signed that copy. This is my signature in my handwriting. I signed all the copies together. The copy that came from my file is a copy of the original that went to Mr. Feitner. [fol. 2052] The copy you have appears to be the same, but I don't know where it came from. That letter is addressed to Mr. P. J. Feitner, Osceola, Florida, who is President of the Osceola Cypress Company. The tabulation attached to that letter with the caption "Comparison of Present and Proposed Contract with Osceola Cypress Company per Train of 20 Cars" is a carbon copy of the tabulation which was referred to in the letter. The original of that carbon copy or tabulation went to Mr. Feitner with the original of the letter.

(Contract and letter offered in evidence.)

Court: Let me ask him another question or two. Mr. Green, that letter and the companion statement refers to a contract with the Osceola Cypress Company for a logging contract. Can you tell me whether or not this is the contract referred to in the letter?

(Handing witness the purported contract marked A 1282 as identified by the witness.)

A. The original of the letter makes reference to certain charges which are set forth in the contract. In the statement attached to the letter, reference is made to the present contract which is the contract dated 1919. There is no mention in the letter itself that I see to the contract as such, except as to reference to charges.

Court: Well, I have not examined the contract, but this statement attached to letter says "Comparison of Present and Proposed Contract" and does the contract provisions compare with statement as to charges?

A. On the present contract, yes sir.

Mr. Adair: You mean the comparison shown on there, on the present contract compares with the charges shown in this other page that you have just identified?

A. The charges do, as I understand it, with this exception—the contract itself is dated May 20, 1919, and subsequent to that time under order of the Railroad Commission [fol. 2053] all rates and charges were increased 25% in 1920 and reduced 10% in 1922, and the charges shown on the statement attached to the letter of June 8, 1928, are the same as those shown in the original contract, having been advanced 25% and then that total reduced 10%. (Page 555B of Tes.)

Court: Gentlemen, here is the way it seems to me. The original of that letter addressed to Mr. Feitner at Osceola, Florida, is supposed to be in his possession and I am without jurisdiction to require him to produce that original. If you have a copy here in Court, I think that secondary evidence would be admissible in view of the fact that the Court is without jurisdiction to require the primary or best evidence. In addition to that, he testified, as I understand it, that they are now operating under that contract. If they are now operating according to the terms of that contract, I think he would have the right to testify to that even though no contract was ever made and that is a mere purported contract and the other contract was made it would be inadmissible. In other words, if he knows of his own knowledge, being connected with the traffic department, that the railroad is now operating according to the provisions of the instrument or writing before the Court, I think he would have a right to do that whether that instrument or writing was ever executed or not.

* * * * * * * *

[fol. 2054] Court: As to the question of relevancy, I reserve the right to rule on that later. I will pass on that in my final report and I want it in there so that in case I should rule wrong, the Court will have it before them to pass on my ruling. I feel like I ought to pass on this question and reserve my ruling on the question of relevancy and materiality of the testimony. As to his own testimony as to what they are now doing in the way of making charges and operating according to the terms and conditions of that instrument of writing, considering it all together, I consider it admissible, particularly since those things come from the files of the corporation represented by the witness.

Mr. Adair: I will say that I can prove Mr. Hunter's signature, and will do so, the party who signed on behalf of the company. I have no further questions.

Cross-examination.

By Mr. Alston:

Mr. Alston: This cross-examination, your Honor, is without waiving my objections.

Q. Please show me or the Court on this map, which is an Atlantic Coast Line Railroad map, the points between which the transactions which you have been referring to have been made.

A. Well, the town of Osceola is located on the Okeechobee Branch of the Florida East Coast Railroad. The branch runs from New Smyrna on the main line 125 miles south to Jacksonville or Maytown, or south to Okeechobee for a distance of 265 miles south of Jacksonville. In other words, that branch to Okeechobee is 140 miles long. The town Osceola, where the lumber mill is located, is not shown on this map but is located 7 miles south of Maytown not far from New Smyrna. It is located 25 miles south of New [fol. 2055] Smyrna. The general location is very similar to the location of the town on the Atlantic Coast Line known as Lake Charm. The contract applies only for haulage over the Okeechobee Branch of the Florida East Coast Railway Company and that is specifically set forth in it and does not apply on the main line of these two other branches. It applies for distances up to 115 miles. There is no specific limit as to stations; it is merely a distance application. Obviously it cannot apply for distances of more than 25 miles in a northerly direction, because that is as far as the branch goes. The Okeechobee Branch is a line of light travel except in a short period during the spring when the northbound vegetable movement is under way. It is a line of extreme light traffic with the exception of that one period. We operate no passenger trains over that line, except that our daily freight train is handled as a mixed train.

Court: As I understand you to say, the railroad is now operating and has been operating according to the terms and conditions of that purported contract and according to the charges in that schedule?

A. The contract has been cancelled. As far as I can determine for a great many months, probably two or three years, there has been no movement over it. There has been no actual use made of this arrangement in that time.

Court: I understood you to say in answer to Mr. Adair's question that they are now operating according to the rates and terms and conditions of that contract?

A. If the Osceola Lumber Company were to ship logs at the present time, they would move on the basis of this contract. They have not shipped logs within recent years, due to the fact that the log cutting has virtually ceased, so Mr. Feitner tells us from business conditions. I do not know when they have hauled anything under that contract. [fol. 2056] The actual haulage of the material, of course, is made by the lumber company and reports of such haulage are (Page 560 B of Tes.) made to the transportation and accounting departments. After the haulage is made, the traffic department would not make any check of the use to which it is put. My information is, however, that there actually has not been any haulage at those rates. I asked the transportation people and they said not for some years. I didn't go back to find the last report. To the best of my knowledge there has not been any haulage under that contract for the period beginning February 8, 1929, and ending in March, 1931. It is true that the lumber company manufactured logs into lumber on our road. That was done at Osceola. Osceola is 25 miles from New Smyrna. We got all of their lumber in their outbound movements. There is no other road at New Smyrna and none at Osceola. I didn't make any effort to determine when there had been a movement on this contract.

Redirect examination.

By Mr. Adair:

Q. Your information in respect to the shutting down of the mill has been or as I take it was from your transportation or traffic department. You have testified that it has been two or three years since anything was hauled under this contract.

A. It is strictly hearsay. It was told to me by our transportation people. I did not make any particular search to find out. I know as a matter of common knowledge that

the lumber people have not been cutting any logs on our line recently in that territory. If there has been any movement of logs into Osceola they would have moved on the basis of this contract or agreement. I don't anticipate that it would be much of a job to ascertain from our traffic department over the telephone when the mill closed down and when the movement at least temporarily stopped.
[fol. 2057] Court: I don't know that he can testify to what somebody else told him.

The paper identified by the witness as a contract between the Florida East Coast Railroad and the Osceola Cypress Company, dated May 20, 1919, together with letter and tabulation attached to same, dated June 8, 1928, and addressed to Mr. P. J. Feitner, Osceola, Florida, was introduced as claimants' Exhibit 90-A.

Objection by Mr. Alston to the contract referred to as a 1282 dated the 20th of May, 1919, between W. G. McAdoo, Director General of Railroads, and Florida East Coast Railway Company, of the first part, and the Osceola Cypress Company, parties of the second part, on the grounds that the contract does not purport to deal with common carriers; that it deals with a special arrangement whereby the Osceola Cypress Company is allowed to use in a limited way at limited times and to a limited extent, certain tracks known as the Okeechobee Branch of the Florida East Coast Railroad, and on the further grounds that the cypress company agrees to indemnify the railroad for all loss sustai ed by it by reason of damages to persons or property arising out of the use of the tracks by the cypress company, w' ereas such conditions do not prevail as to a common carrier, and on the further ground that it is operated as a special line on which there is limited traffic and because it is in effect a transit contract.

C. H. Myers, sworn as a witness for the claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is C. H. Myers. I am General Freight Agent of the South Georgia Railroad. I reside in Quitman,

Georgia. I am here under subpœna. C. T. Tillman, Vice-President, and C. T. Cater, Secretary, signed this agreement dated the 21st day of June, 1929, between the South Georgia Railway Company and the Gibson-Justus Company, Inc., for the South Georgia Railway Company, and [fol. 2058] T. L. Gibson and A. L. Justus, Secretary, signed it for the Gibson-Justus Company, Inc. I am familiar with all of these signatures. I have seen them sign their names and those are their signatures. This paper marked claimants' "Exhibit 91 a," executed under date of May 5, 1928, by and between the South Georgia Railway Company and F. L. Bailey of Madison County, Florida, was executed on behalf of the South Georgia Railway Company by Mr. C. T. Tillman, Vice-President, and Mr. C. F. Cater, Secretary. I know their signatures and have seen them sign their names and those are their signatures. Mr. F. L. Bailey was the other party. I am acquainted with his signature and this is his signature. These two papers which I have identified were put into operating force and effect. They continued in effect about two years.

(The two contracts identified by the witness were offered as claimants' Exhibits 91-A and 92-A.)

Objection by Mr. Alston that these contracts deal with the transportation of lumber for a limited distance under very unusual circumstances and are not comparable to the circumstances involved in any transaction in this case.

Court: What is the duration of them?
Mr. Adair: There is no limit on them.
Court: That is all right then.

(Witness continuing:)

I have been with my railroad about 21 years. I have held my present position 20 years. The termini of our railroad are Adel, Georgia, and Perry, Florida. Since 1920 we have had quite a few other contracts for the transportation of log trains over our lines with other parties. I will have to go to the files to tell how many we have had and with whom and the dates of them.

[fol. 2059] Q. Refresh your recollection from that and tell me the dates and the parties.

Objection by Mr. Alston.

This is our master contract. This is the 18th day of June, 1918, and all other contracts are based on that. This

is between the Interstate Lumber Company and the Southern Georgia Railway Company. This one is on the 18th day of June, 1918, between the South Georgia Railway Company and B. W. Barrington. Some of these people operated from different parts, but Mr. Barrington's was at Baden, Georgia. Here is one on the 21st of July, 1924, between the South Georgia Railway Company and the Greenland Manufacturing Company. Here is one on the first day of February, 1924, between the South Georgia Railway Company and the Gress Manufacturing Company, Derett, Florida. Here is one on February 24, 1922, between the South Georgia Railroad Company and Gregory and Evans, located at Perry, Florida. Here is one dated the 16th of February, 1926, between the South Georgia Railway Company and the Warfield Lumber Company, located at Quitman, Ga. One on the 18th day of April, 1925, between the South Georgia Railway Company and the Barfield Lumber Company, located at Quitman, Georgia. Another on the 30th day of October, 1924, with the Barfield Lumber Company, located at Quitman. Another on the 16th day of February, 1926, with the Barfield Lumber Company, located at Quitman. Another dated April 18, 1925, with the Barfield Lumber Company at Quitman. Another on the 21st day of June, 1929, with the Long Leaf Lumber and Veneer Works, Greenville, Florida. Another on the 2d day of November, 1928, with Mason and West, Greenville, Florida. Another March 1st, 1912, with the Interstate Lumber Company, Quitman, Georgia. Another August 2d, 1920, with the Long Leaf Yellow Pine Company, Quitman, Georgia; another January 1st, 1920, with the Long Leaf Yellow Pine Company, Quitman, Georgia. Another January 1st, 1919, with the Long Leaf Yellow Pine Company, Quitman, Georgia. Another January 24th, 1922, with Gress Manufacturing Company, Derett, Florida. Another October [fol. 2060] 14th, 1925, with the Southern Sawmill Company, Roundtree, Georgia, and May 20th, 1912, with the Weaver Lockridge Company, Boyd, Florida. That is all.

These contracts to which I have referred are all substantially identical with the contracts that have been offered in evidence. The original contract was with the Interstate Lumber Company. I think I have the original of that contract here. This contract was increased 25% under general order No. 28. I remember we had quite a time finding out if these increases would run against the con-

tract. We finally put it in and amended the contract, but on the next 25% the South Georgia Railway Company did not increase the old contract. I refer to the so-called ex parte No. 74. The South Georgia Railway Company did not make the 10% reduction that was afterwards made. We took no notice of the second 25% advance or 10% reduction. The South Georgia Railway Company still makes that log contract. It is not confined to any particular class of people—it is open. The Weaver-Lockridge Company is not operating under it. Our railroad runs to Perry and there is timber cut down there. (Page 570B Tes.) The saw mills on our line down there are all closed except one at Boyd, Florida. It has continued on a limited basis.

Mr. Alston: If the Court please, I offer additional objection to the exhibits since the witness has given his testimony, for the reason that the testimony accentuates the differences between the contracts which he has described and the relationship which is governed in the case now on trial. There appears to have been nothing involved in that transaction except the rental of a track.

Cross-examination.

By Mr. Alston:

Our train operates from Adel, Georgia, through Quitman and through Bennett, Greenville and on to Perry. The distance is 76 miles. That is the entire length of our line. [fol. 2061] The commodities on the lower end of our road in Florida are lumber, naval stores and logs. I do not claim that originally those logs are handled by independent persons. Some of those logs are hauled into the mills, especially at Greenville. We go here north and the trams handle them across the Atlantic Coast Line back down into Boyd (illustrating on map).

Q. Trains running from where?

A. From Lake Boyd up here. That is about 11 miles north of Boyd. It is 6 miles north of Perry. Only one of those contracts has been used in the last 12 months over our line. The Weaver-Lockridge Company hauls in excess of their minimum—a penalty of fifteen cents a thousand.

Q. Fifteen cents a thousand for how much?

A. It is $200.00. He is permitted to haul 30,000 feet a day and pay for it by the month. It is in the contract.

(Taking the paper.) Yes, $256.00. That is for over 7 miles and not exceeding 12 miles. The rates are $256.00 a month for 30,000 feet per day. It is on a per car basis and they don't load their car very heavy. I imagine they load about 2,000 feet on each car. They haul all of them in one train and there would be about 15 cars in the train. Our railroad furnishes just the track and nothing but the track. We do not furnish any water for the engine or locomotive or fuel nor employees of any kind nor equipment. That road has been used by one mill in the past two years. It has been about five years since it was used by any other mill. It has been about five years since any of these contracts were used, except the Weaver-Lockridge Company. The actual length of that haul is about 11 or 12 miles. Other logs are hauled over our road besides under this arrangement. Quite a few are hauled. Here is a copy of the South Georgia Railway Company I. C. C. 90, effective August 16, 1929, that will show the net rates on logs accorded transit privileges. We have handled an average of about 100 cars of logs a month under that tariff. They are not [fol. 2062] logs over six feet. We don't handle any long logs. This tariff would apply on the logs over six feet. We apply that on any logs. These contracts do not provide for the hauling of logs of any length. This tariff here is where the South Georgia Railway handled the logs in its own trains and regular equipment. There were some long length logs handled. I couldn't say just how many, but quite a few. I couldn't say how many tons of logs we reported to the Interstate Commerce Commission for 1932. I didn't bring those records along with me. I am General Freight Agent of the road. I do not have charge of making those returns. They are made up in the Accounting Department. (Page 575B of Tes.) We take that information off the waybills. That is under the Interstate Commerce Commission rules. The Accounting Department makes up all of that. It is possible that the cars for logs reported by our road for 1932 were 48 as far as the long logs are concerned, but this other—these short logs—must have been reported as crate material, butts, etc. Yes, we make a distinction in our reporting. We handle approximately 100 carloads of billets or crate material a month from all stations to Greenville and to Boyd. That would be shipped over our own rails in our own train. The crate people from Greenville will go out and contract and offer

so much per car for these short length blocks. They are about 3 feet long and they purchase them from the farmers along the line of road. These short length logs otherwise would have gone to waste. When they come to us they have been long logs but have been cut. They saw them up after they get them out of the swamp. Those contracts have been in force ever since their date. Of course, many of them have expired. All have expired except one. This is the only one operating under these contracts.

Court: I mean is there any specific time in the contract as to when it shall expire?

A. I think we have one contract. This contract we have offered here does not seem to bear any expiration date. The Weaver-Lockridge Lumber Company contract is the [fol. 2063] one that has been in operation and there have been practically no shipments over that. They do exceed the minimum each month and the minimum is 30,000 feet per day. That is 750,000 feet per month and they will haul on an average of a million feet per month.

Redirect examination.

They operated about two years under this contract between F. L. Bailey and our railroad company, Claimants' Exhibit No. 92-A, dated May 5, 1928, and they operated about two years under the contract between our railroad and the Gibson-Justus Company dated June 21, 1929. There have been operations under that contract within the past 5 years in addition to the Weaver-Lockridge Lumber Company. The operations generally under the contracts discontinued since the depression in the lumber market. This contract is still an open proposal that our railroad will make with any responsible lumber company. We will be very glad to do so. Long logs are transported under the Weaver-Lockridge Lumber Company contract and under the other contracts I have offered in evidence here. The tariff issued July 16, 1929, effective August 18, 1929, is our regular tariff for the transportation of logs. That tariff included long logs as well as short logs. That tariff provides that you pay the full tariff rate into the mill point and when you ship as much as 50% of the inbound weight, then the inbound rates are reduced to the rates as shown in the tables. The transit rules that are applicable are in here.

(The Atlantic Coast Line Railroad Company's Florida Local Tariff No. 11, issued October 17, 1916, effective November 1, 1916, was offered in evidence as Claimants' Exhibit No. 93-A.)

(Witness excused.)

Mr. CLARENCE G. ASHBY, sworn for the claimants, testified as follows:

[fol. 2064] Direct examination.

By Mr. Adair:

My name is Clarence G. Ashby. I am a member of the law firm of Knight, Adair, Cooper & Osborne, Jacksonville, Florida. I have been practicing law for 11 years. I was acquainted with Mr. E. L. Hunter in his lifetime. He was the President of the Osceola Cypress Company.

Q. I hand you what purports to be an agreement made under date of the 20th of May 1919 between Mr. McAdoo as Director General of Railroads and the Florida East Coast Railway on the one hand, and the Osceola Cypress Company, a corporation in Florida, on the other hand, and I ask you to examine the signature of the person that signed it on behalf of the Osceola Cypress Company and tell me who purported to execute it on behalf of the Osceola Cypress Company.

A. Mr. E. L. Hunter as President. I have seen him sign his name in his lifetime and I am familiar with his signature. In my opinion that is his signature (referring to Exhibit 90-A).

(The paper so identified was offered as Claimants' Exhibit 90-A.)

Cross-examination.

By Mr. Alston:

I do not know the signatures of any of those witnesses. (Page 560B of Tes.) I did not see Mr. Hunter sign this.

Q. This paper purports to have been signed on May 20th, 1919, which has been about 14 years ago. How long had you known Mr. Hunter then?

A. I didn't know him then. I first knew Mr. Hunter in 1922. My knowledge of his signature in 1919 depends upon my recollection of his signature after 1922. My opportunities for knowing his signature were that his son was a very [fol. 2065] good friend of mine and I have seen his son get checks from him and was along with him when he got them. I saw him sign the checks and I have seen his signature on his will and have also seen letters signed by him. My recollection is that the will was signed in 1923. I think he died in the latter part of 1923. He lived in Jacksonville. He had mills down at Osceola, Florida and he had rooms in a house in Jacksonville. I couldn't say whether that was his official residence.

Mr. Alston: Your honor, we wish to renew our objections to it.

(Witness excused.)

A certificate under the signature and seal of the Chairman of the Florida Railroad Commission, photostatic copy of the title page and page 4 of the Atlantic Coast Line Railroad Company's tariff No. 11, issued October 17th, 1916, and effective November 1st, 1916, was offered as Claimants' Exhibit No. 93 A.

Title page and page 27 of the Louisville and Nashville Railroad Company tariff I. C. C. No. A 15271, effective April 1st, 1923, offered as Claimants' Exhibit 94-A.

A certified copy of Form OS-A, Freight Service Performance of the Atlantic Coast Line Railroad Company for the month of December 1930, certified by the Interstate Commerce Commission, was offered as Claimants' Exhibit No. 95-A.

Copies of pages 508, 509, 524, 525 and 528 of the Annual Report of the Atlantic Coast Line Railroad Company to the Interstate Commerce Commission for the year ending December 31st, 1930, certified by the Interstate Commerce Commission, was offered in evidence as Claimants' Exhibit No. 96-A.

A copy of the title page and pages 5, 6, 7, 8, 55, 56, 57 and 58 of Comparative Statement of Operating Averages, Class I, Steam Railways in the United States, years 1930 through 1926, certified by the Interstate Commerce Commission, was offered as Claimants' Exhibit 97-A.

Mr. Alston: May I ask what these are offered for?

Mr. Ashby: At certain points in Mr. Saunders' testimony, [fol. 2066] he has referred to testimony or documents on file with the Interstate Commerce Commission and objection was made that they were not in the case here, and at that time we promised, or Mr. Saunders agreed, that he would produce those, and we have produced them.

Mr. Adair: We promised that we would produce the basic data and it is here. Now, if the Court please, we are trying to ascertain, trying to check existing recollection in respect to the time of this Osceola Cypress Company temporarily discontinuing operation, which I want to have somebody prove, and then we have this question to come up with respect to the testimony of Mr. Roux and his contract, and I believe that is to come up at the conclusion of the noon hour recess and other than that, we have no further testimony to offer, unless through blunder or other reason we might have left out something, in which case the Court would permit us to offer same.

Court: You mean you have no other evidence?

Mr. Adair: Yes, sir; that is the completion of our case in chief.

Mr. D. B. Green, recalled to the stand, testified as follows:

Direct examination.

By Mr. Adair:

I am the same Mr. Green of the Florida East Coast Railway Company who testified this morning.

Q. Have you informed yourself as to when the last movement of logs under this trackage agreement, Exhibit 90-A, took place?

A. I have telephoned to St. Augustine and talked to Mr. Hawkins, General Freight Agent of the Florida East Coast Railroad, who advises me while the movement has been very light for some time, he didn't have definite information as to [fol. 2067] the exact number of shipments at any particular period and that the last movement was during July, 1930.

Q. That was the last that actually moved under that contract up to the present time?

A. That is so.

Cross-examination.

By Mr. Alston:

Q. Do you know how many logs moved then?

A. The freight revenue on the shipment, or rather I should say the contract revenue on the shipment then made was approximately $270.00. That was one movement. (Page 585B of Tes.) I don't know how many other movements there were, only that the information that Mr. Hawkins gave me was that the movement was very light and the last movement was in July, 1930. That is not within my own knowledge.

Q. Now, Mr. Green, the schedule attached to this Exhibit and carbon copy of letter of June 8, 1928, known as Claimants' Exhibit 90 A 1, showed the train miles, gross train mile revenue for the movement you testified about this morning and to which you referred a few minutes ago would run from a maximum of $1.40 per train mile to $1.00 per train mile. Please say whether or not you regard those returns for train miles as compensatory?

(Objection by Mr. Adair that the question is not in course of the direct examination.)

Court: I will let him answer it.

A. I will say that we consider all the revenue, particularly the figure from $1.00 to $1.25 per train mile, as being extremely sub-normal, very low indeed, and that in the past 18 [fol. 2068] months we have been approached to put in some similar arrangement for the movement of logs from the main line to Jacksonville and have considered the revenue resulting from this contract so subnormally low, that we have positively refused to put in any such basis for application on the main line.

(Witness excused.)

(The Court having ruled that the contracts which Mr. Roux was subpoenaed to produce were admissible, that Mr. Roux's deposition could be taken at his home if he refused to testify here, Mr. Roux consented to take the stand and give his testimony.)

Mr. E. T. Roux, sworn by claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is E. T. Roux and I reside at Bartow, Florida. I have been President of Roux Crate Company since it was organized before 1920. I am the E. T. Roux that executed this contract on behalf of the Roux Crate Company. That contract has been superseded by another contract. (Page [fol. 2069] 590B of Tes.) This contract remained in force and effect until September 9th, 1931.

(The contract dated October 25th, 1925, between the Seaboard Air Line Railway Company and the Roux Crate Company, as identified by the witness, offered in evidence as Claimants' Exhibit 98A.)

I am the same E. T. Roux who executed the contract between the Charlotte Harbor and Northern Railway and the Roux Crate Company, dated November 1st, 1925. That contract continued in force and effect until September 9th, 1931.

(The contract above described was offered in evidence as Claimants' Exhibit 99A.)

I took the date as the date of this new contract. When this contract speaks of a loaded truck, my interpretation is that it refers to a truck load of logs. I don't know whether that is the railroad's construction too. The contract speaks for itself so far as I know.

Q. How did it operate? This contract says "the Licensee yielding and paying unto the railway for said rights and privileges the sum of $1.00 per loaded truck with a minimum of $16.00 per loaded train moved via said track of the railway."

A. We had regular schedule log cars. They were called trucks. Two trucks, as I interpret it, make up a car, eight wheels under each truck, that makes up a car. What is referred to here is the special kind of car for transportation of logs. This thing called a truck consisted of two sets of wheels, or trucks as they are sometimes called, connected by a pole or some other like thing. In other words, there are eight car wheels under a truck. (Illustrating on map:)

This is the Atlantic Coast Line Railroad here. This is the Seaboard Air Line Railway here and it operates from a point approximately here and approximately in here up to a place [fol. 2070] right about in here. In other words, this is approximately where our log road intersects the Seaboard and this is approximately the location of our saw mill. The distance is approximately 80 miles. The line I am pointing out is in Southwest Florida in Charlotte County and it is a little south of Ft. Ogden and runs up to a little east of Bartow.

(Objection by Mr. Alston to the contract marked as Claimants' Exhibit No. 98A, on the ground that it involves a period different from the period involved in this case and because it is not a common carrier obligation.)

I executed and delivered on behalf of the Roux Crate Company the agreement made September 9th, 1931 between L. R. Powell, Jr., and E. W. Smith, as Receivers of Seaboard Air Line Railway Company and the Roux Crate Company. This contract became effective the date of the contract and it is still effective.

(The aforementioned agreement was offered in evidence as Claimants' Exhibit 100A.)

With reference to the first contract with the Seaboard Air Line Railway, the Roux Crate Company furnished the engines and trains. We furnished the engineer, conductor, flagman and fireman—every employee. There was nothing furnished by the railroad save its tracks. In that original contract we were limited in the operation to that part of the railway company's track extending from Ridgewood Junction to Lake Garfield, both in Florida. We were limited to making two round trips in one day, but I do not remember the exact wording of the contract. We operated under it a good many years and I am sure we never operated but one train a day each way. The occasion for making the contract identified as Claimants' Exhibit 100A, was a change of location in the timber. We moved our logging operation to the timber further south. (Page 595B of Tes.) We brought these logs up to the Seaboard Air Line on our own tracks. It is correct that we just continued our own train over those [fol. 2071] tracks of the Seaboard Air Line Railway. That was done under this contract.

Q. Now this contract, did you carry it over any further mileage of the Seaboard Air Line Railway?

A. The last contract extended the distance into Charlotte County. The first contract was in Manatee County, or with the junction of the Seaboard in Hardee County. Under the first contract we operated only about 40 odd miles. When I referred to 80 miles, I meant under the last contract.

Q. Now how many pounds of logs did these conveyances that you call trucks carry?

A. I have never had occasion to weigh one of them. I have never taken note of the number of feet. We know it is in there. We had little concern about that under this contract. I judge that the loadings would be less on these trucks than on a flat car. How much less would depend altogether on the length of the logs and we never measured the length of the logs. We simply loaded the trucks in a safe manner in which to operate over the road.

Q. Now this new contract became $2.50 per loaded truck with a minimum of $37.50 per loaded train. Did that rate continue?

A. We have been given an increased number of cars. In other words, we have been given the privilege of hauling 30 cars to the train.

Q. And you had 25 cars under the first contract?

A. I have not read that contract in 8 or 10 years. I don't know what it is, really. I think you are correct that the two contracts are the same as to the assumption of liabilities by the company.

Q. Under this second contract the Roux Crate Company [fol. 2072] was to pay for all water used by your locomotive at the rate of $1.00 per tank, and I don't find that in the first contract, though I may have overlooked it.

A. I think you will find it there.

Q. In the first contract?

A. I think so. I am not sure about. I don't believe you will, either, for the distance was short enough where we didn't have to stop to take on water.

Q. And you paid for it under the second contract?

A. Yes, sir.

By Mr. Adair:

Q. Mr. Roux, I am not quite sure whether you answered this question or not, so will ask you again. This contract, Claimants' Exhibit 99A, with the Charlotte Harbor and

Northern Railway Company was to Ft. Green Springs, Florida, from Ridgewood Junction, Florida, and how far is that?

A. I don't remember. The Seaboard Air Line Railway contract of October 1925 and the Charlotte Harbor and Northern Railway contract of November 1925, covered the same movements. That was at the time when the Seaboard was operating the Charlotte Harbor and Northern Railway as the Charlotte Harbor and Northern Railway, as I recall, and it took the two contracts to make a complete run from the intersection of our logging road tram road to the mill. Our mill was located at the same place it is now—at Lake Garfield. Ft. Green Springs to Ridgewood Junction was the most distant point from Lake Garfield, I think. Ft. Green Springs was the further from Lake Garfield. That was the furthest point on the Charlotte Harbor and Northern Railway. Ridgewood Junction was where the Seaboard and the Charlotte Harbor and Northern came together. It is about 46 miles from Ft. Green Springs to Lake Garfield. It is correct that this contract dated September 9th, 1931, covered [fol: 2073] the whole movement. That distance is a little more than 80 miles. We are operating that now. We operated continuously from the date of this first contract, 98A and 99A, until this new agreement was made in 1931. We are still operating under the contract dated September, 1931. During the years 1928 and 1929 and the first month or two of 1930, we never operated more than one train a day. Sometimes we had four, sometimes five, and sometimes six trains a week. Generally, not less than four and never more than six.

Q. To use a short term, isn't a railroad truck the same thing as a flat car without a bottom, or substantially so?

A. It at least has eight wheels. (Page 600B of Tes.) The trucks on which those eight wheels are, are connected with a ridge pole. That is an 8x8 timber with an iron folder at each end. There are four stanchions to each truck, two at each end. The number of feet we are accustomed to load to the truck depends altogether upon the size and length of the timber. It would be merely a guess, but we load from 1,500 to 2,500 feet of logs to the truck. 2000 feet would not be a low average—it would be a fair average. I don't think 2,000 would be rather a high average.

Mr. Alston: Would you mind pointing out on this map where that Charlotte Harbor and Northern extension was

or what additional tracks were covered by the contract of 1931?

A. If there is a railroad map here of the Seaboard Air Line Railroad, I could tell you better. A few miles south of Ft. Ogden and approximately 5 miles east of Bartow is the location of the line. The two original first contracts were cancelled and the contract of 1931 has taken their place. The first contract covered the trackage around Bartow where our mill was, and it came down to where our timber was at the place on this map south of Tiger Bay. A truck has no brakes on it. We usually have some cars in the train [fol. 2074] with brakes—not hand brakes—we use air next to the engine. We put those air brakes next to the engine. The trucks themselves have no air brakes.

(Direct examination continued:)

We usually had one or two cars with air brakes. No difference was made in the contents of the car and the contents of the truck.

Q. Now let me see if I understood you and Mr. Alston a moment ago about the location of your timber. As I now understand it, your timber is located at the point of origin on the Seaboard Air Line Railway and the logs are brought in some distance over your own tram road, are they not?

A. Yes, sir.

Q. And where do you tap the Seaboard Air Line Railway now?

A. At Saline.

Q. Is that a regular station or a flag station?

A. A flag station.

(Witness excused.)

Mr. Adair: The contract we placed in evidence between the Receivers of the Seaboard Air Line Railway and the Roux Crate Company, dated September 9, 1931, should be marked Claimants' Exhibit 99 A 1, and where reference heretofore has been made to 100 A, it will be considered as referring to 99 A 1. Now if Mr. Alston has no objection, Your Honor, I would like to have the original contracts copied and place in evidence the copies in lieu of the original contracts.

Mr. Alston: No objection.

[fol. 2075] Court: All right, it will take that direction.

(The claimants rest.)

Roy Pope, sworn by defendants, testified as follows:

Direct examination.

By Mr. Alston:

My name is Roy Pope. My residence is Atlanta, Georgia. I am General Freight Agent of the Atlanta, Birmingham and Coast Railroad. I have been General Freight Agent for a number of years, and prior to that, Assistant General Freight Agent. I have been in the railroad business since 1908.

Q. An exhibit was offered showing some rates on the A., B. and C. Railroad from Montezuma to Albany, Georgia, by the Georgia Southwest and Gulf Railway. Will you please tell the Court the history of these rates and what they are and how many places they affect?

A. I understand, Mr. Alston, that it involves the rates from four local stations on our main line south or east from Montezuma. The rates are published on page 55 of our tariff I. C. C. No. 61.

Q. Now I show you a segment of a map, and on there is a red line, a blue line and a green line. Please state to the Court what that shows.

A. The stations are between Vienna on the south and Montezuma on the north. I mean the four stations affected by the rates referred to. Those rates as involved here were established in 1925. There are certain milling interests at Albany who had acquired a large tract of timber along the Flint River, which is paralleled on the west side by the Central of Georgia Railroad running in a southwestern and thence southeastern direction to Albany and paralleled on the east by the A., B. and C. Railroad running in a south-[fol. 2076] easterly direction from Cordele, and thence in a southwesterly direction by the Georgia Southwestern and Gulf Railroad to Albany. The tract of timber was about equal distance for cross-country hauling to the line of the A., B. and C. to these four stations as to comparable sta-

tions on the Central of Georgia west of the river. It was represented to us by the interests desiring to load the logs that they could haul the logs cross-country to the Central of Georgia and the Central of Georgia rates from these cross-country stations varied from $13.50 per car of 40,000 pounds, excess in proportion, to $14.00 per car of 40,000 pounds, excess in proportion. The rate from Montezuma being $14.50 per car of 40,000 pounds, excess in proportion, to Albany, Georgia. The rates which the A., B. and C. established with the concurrence of the Georgia, Southwestern and Gulf Railroad, represented the maximum that would attract the movement of the logs for this competitive timber, via the A., B. & C. and G. S. and G. Railroads to Albany as against the movement via the Central of Georgia to Albany. The rates were established solely to meet a competitive situation. (Page 605B of Tes.) The distance from Montezuma via the Central of Georgia was 57 miles, Fields being the nearest from Montezuma duly south; Byronville and Lilly were distant by the A., B. and C. to Cordele, and G. S. and G. to Byronville 54 miles, from Dooling to Byronville 56 miles and from Lilly 52 miles. We did not consider those as reasonably measured rates but they represented the maximum rates that would attract the movement of logs from this tract of timber by our line and the G. S. and G. Railway to Albany, as against which the Central of Georgia applied. The business or the movement was completed in October, 1930. For the year 1929 there were 97 cars that moved to Albany under these rates. In 1930 up to the last car which was in October, we handled 25 cars. During the year 1929 the A., B. and C. originally handled from one station on its line to another station on its line, 523 cars of logs, and in 1930, 246 cars of logs. The total number of cars originating on the A., B. & C. Railroad, either moving from one station to another station on our line or from a station on our line to a point on a con-
[fol. 2077] necting line for the year 1929, was 1,128 cars; 1930, 618 cars, and for 1931, 325 cars. All of these cars did not originate from these points. This includes the total movement on the system of 640 miles of railroad. The figures I first gave are the ones referring to the movement from the four stations affected by the tariff referred to. I mentioned them to show that the actual movement for the year 1929 from these stations to Albany, represent a

small percentage of the total movement of logs on our line. The rate of the Georgia, Southwestern and Gulf Railroad was published in I. C. C. 61. The tariff itself has not been cancelled, but the special rates from these four stations to Albany have been cancelled. The movement was completed in October, 1930 and the rates are now obsolete. I have never served in an official capacity with any other railroad except the Atlanta, Birmingham and Coast Railroad. I got my first training with the old Q. and C. system at Cincinnati, but I have been with the A., B. and A., or the A., B. and C. since 1916. The A., B. and C. Railroad operates in Georgia and Alabama.

Q. In Alabama, what is the intrastate rate, or what was the intrastate rate in effect during the period beginning February 8th, 1929 and ending in March, 1931?

A. I have not checked on logs. This rate was in use on our road. The rates on our line in Alabama reflect the old Pierpont scale given by the I. C. C., as changed by the horizontal increases and the 10% reduction. The Pierpont scale is what is known as the present interstate scale. I understand that that was in effect by the Interstate Commerce Commission. I couldn't say positively. I understand that the rates in Alabama for intrastate application were the same as the interstate scale to which I have referred.

Q. Now, Mr. Pope, state whether or not transportation [fol. 2078] conditions in Florida below the River Junction to Jacksonville Line are looked upon as better or worse than the territory or parts of the territory in the south from a transportation standpoint.

Mr. Adair: If Your Honor please, I don't think it has been shown that Mr. Pope has any tracks in his railroad south of that Jacksonville River Junction Line, and therefore I am not willing to have him give an opinion upon it unless he has been shown to have some direct connection which would entitle him to express an opinion on it, and I object to it.

Mr. Alston: I don't think that the possession of tracks by his railroad is conclusive as to his knowledge or lack of it.

Mr. Adair: He has not shown any knowledge.

Court: He might have knowledge from some other source than that acquired in his official capacity.

A. Your Honor please, I only have very general knowledge of the transportation conditions in Florida compared with other sections of the country, first by observation, having traveled somewhat through Florida; second from various references of the Interstate Commerce Commission in cases involving the level of rates in other states in which they have pointed out the lack of traffic, the low traffic density, and permitted higher rates to be established within the State of Florida than into the State of Florida.

(Objection by Mr. Adair to the witness testifying concerning the contents of the reports of the Interstate Commerce Commission, and requesting the witness to state his qualifications.)

The A., B. and C. Railroad gets within 76 miles of Jacksonville, running to Waycross. I judge it is not 76 miles from the Florida line. We form a part of our routes between the State of Florida on the one hand, and the States [fol. 2079] of Georgia and Alabama and states north on the other. Our line extends from Atlanta to Waycross. We connect with the Seaboard Air Line at Thallman. We connect with the Southern Railway and the G. S. and F. at Cordele, which line extends into Florida, and we connect at Thomasville with the Atlantic Coast Line, which line operates in Florida. (Page 610 B of the Tes.) We also connect at Tifton with the G. S. and F. and the Atlantic Coast Line. For a great number of years I have participated in the making of tariffs and rates for intrastate carriage of freight into and out of Florida by rail.

Q. From your participation in the making of such rates from your experience please state whether or not transportation in Florida between the lines which I have mentioned commands a higher or lower rate?

(Objection by Mr. Adair that the witness has not shown himself to be qualified to answer the question.)

Court: Answer the question, but subject to his objection, of course.

A. In the natural course of my official duties, I have been in contact with the rates on traffic between Florida on the one hand and Georgia and other states on the other. We participate in the movement of traffic to and from Florida. I know from my own knowledge that it is customary to make the rates from Georgia into Florida or from other

states into Florida, higher than the level applied north of the State of Florida, to reflect the operating conditions in the State of Florida, the rates being usually made definitely higher for the distance hauled within the State of Florida. I have participated in the making of a number of rates operating into and out of Florida, interstate, in which the A., B. and C. Railway has been a party and before the A., B. and C. Railway came into existence, I had such relation with the A., B. and A. Railway. They operated the same line.

Q. Now Mr. Pope, please state whether or not in your [fol. 2080] opinion the rate you have described as the Pierpont scale and which has been added to and subtracted from as you have testified and which now stands as the Interstate Commerce Commission interstate rates which you have described, was reasonable or unreasonable for the transportation of logs for the period beginning February 8th, 1929, and ending in March or April, 1931?

(Objection by Mr. Adair that the witness has shown no qualification to testify as to the rates on logs in Florida.)

A. My answer would be that the so-called Pierpont scale would represent a reasonable minimum level of rates for application on logs between points in the State of Florida and points in Georgia, and between points in the State of Georgia on the one hand and points in the State of Florida on the other. Those were the rates in effect in Alabama intrastate and into and out of Alabama interstate for the period which I have mentioned. There may be some exceptions, but they generally apply on the trunk lines operating in the State of Alabama and between the State of Alabama on the one hand and the State of Georgia on the other, such as the Central of Georgia Railroad, the Atlantic Coast Line Railroad, the Seaboard Air Line Railroad, the Atlanta, Birmingham and Coast Railroad and the Southern Railroad.

Cross-examination.

By Mr. Adair:

There may have been exceptions. I don't make the absolute statement that there were not any exceptions. This so-called Pierpont scale is in effect on our railroad in Alabama too. I don't know whether this is true with respect to all of the railroads in Alabama. I know that there are

rates on that basis. There may be some exceptions on some railroads, but they are on the Central of Georgia, the Seaboard Air Line and the Southern Railway.

Q. You don't know the Southern Railway has reduced its rate on logs in Alabama?

[fol. 2081] A. With some exceptions. I don't know what exceptions they have made.

Q. You don't know what changes the Southern Railway has made on rates on logs in Alabama?

A. No sir.

(Objection by Mr. Alston that the question refers to a period other than that under inquiry.)

A. I stated in my direct testimony that the general level of rates in the State of Alabama was on a basis of the Pierpont scale, but there might be some exceptions, but I couldn't point out the specific point-to-point exceptions because I don't know any of them. I understand that the Central of Georgia has some exceptions in Montgomery; I don't know about Dothan. I don't know about the rates of the Southern into Selma and York. (Page 615 B of Tes.) I couldn't say what the rates of the Southern at Mobile are. I don't know whether the N. C. and St. L. Railroad has made any exception to their rates in Georgia or not. I don't know what exceptions the L. and N. Railroad have made in the rates on logs in the past year. I don't know whether the L. and N. has established a rate regardless of weight over the entire system. I don't presume to know every exception that is made in the general level of rates on logs in the Southern states. I may concede there may be some exceptions here and there but a small percentage of the general level of rates.

Q. Have you not heard that the Louisville and Nashville Railroad on all of its track in Florida, interstate in Florida and intrastate in Florida, have put in there per car rates regardless of weight during the past year?

A. I have not seen the rates and couldn't say what they are or what exceptions they have made. I have heard of some specific car rates between specific given points, but I have not heard that the N. C. and St. L. Railroad has put them in over their entire system.

[fol. 2082] Q. You say that some of your testimony with respect to the reasonableness of these rates in Florida is

based upon your travel and observation in Florida and your travel and observation in other nearby states? That is correct?

A. That, coupled with the general knowledge that I have obtained in handling rate propositions and appearing before the Interstate Commerce Commission and reading their evidence and hearing the evidence of witnesses in behalf of the Florida railroads. In Florida, from a transportation standpoint, there is a sparcity of traffic. You have a lot of lakes, lots of swamps, some rivers, but not many mountains.

Q. From the standpoint of actual transportation, the grades and tracks, are not transportation conditions in Florida from the standpoint of topography more favorable than they are in your fair State of Georgia? That is, there are fewer hills and grades, I mean on the whole?

A. I judge there are. I should think that there would necessarily be fewer sharp curves on that account, but that does not make traffic.

Q. That is true, but are you prepared to say there was a scarcity of log traffic in Florida, that is, until this so-called Pierpont scale was placed upon us, or do you know anything about the density of log traffic in Florida?

A. I couldn't testify as to the exact traffic in logs in the State of Florida. I am speaking of the general situation. I don't know to what extent the log traffic is thick or thin or to what extent the logs in the past have moved in Florida as compared to the extent that they now move. I do know that a railroad couldn't live alone on that traffic. A railroad could not live alone on the revenue derived from log traffic. I do not know the number of cars of logs that our road transported for the year 1932. I have not the figures for the year 1932. I gave you the figures for 1929 and 1930. For 1930 there were 618 cars over our entire [fol. 2083] system; for 1929, 1,128 but I should qualify that by this statement, that we are not primarily a heavy log carrying railroad. The timber has been substantially cut along our line. I base my statement as to log rates on general knowledge featured by years of experience in the study of operation of railroads and the rates on the traffic they transport. I have been with my present company since 1916. Before that I was with the old Q. and C. System at Cincinnati. I don't recall what their log tonnage was. Our log tonnage has gradually decreased quite a bit from

our tonnage in former days—former years. We handled into local points where saw mills were located and did not move by way of water transportation. I wouldn't want to make a guess at what our movement in logs was in 1932. I would say that if I did guess, it wouldn't have exceeded the movement for 1931. I of course know in a general way the affiliation between our railroad and the Atlantic Coast Line Railroad, but as to testifying as to the exact details and all of the conditions, I am not prepared to say. The Atlantic Coast Line would be in a better position to inform you in that respect than I.

Mr. Alston: Would you like for me to state for the railroad that the Atlantic Coast Line Railroad owns all the shares of the common stock of the A., B. and C. Railroad, except the directors' awarded shares with $53,000,000 preferred stock outstanding?

Mr. Adair: The common stock controls the railroad?

Mr. Alston: Controls it until a certain default upon payment of dividends upon the preferred stock, and then the voting (page 620 B of Tes.) power passes to the preferred stock. It has not yet passed.

(Witness continued:)

The Pierpont scale is not in effect on our railroad. We have the rates prescribed by the Georgia Commission. They are lower than the Pierpont scale. They are the so-called Georgia Class P rates per car of 40,000 pounds, ex-
[fol. 2084] cess in proportion. The combination applying for joint line hauls, and they are awarded to apply on logs for manufacture and reshipment.

Q. No policing, is there? No bond required? No drawback or requirement that the higher rate be paid?

A. Yes sir.

Q. Is it in effect morally a higher obligation?

A. Yes sir. They are such rates inasmuch as they apply on logs for manufacture and reshipment.

P - Mr. Gutheim:

I spoke of the sparcity of traffic in Florida. I mean traffic density measured by ton miles per mile in Florida. I spoke of Florida as compared with other southern states. I have seen figures concerning the individual density of the principal lines in Florida, but I couldn't recall them without

refreshing my memory on them. The A., B. and C. Railroad density is lower than the rest of the southern territory. I do not know how our density compares with the Florida density.

Redirect examination:

Q. Mr. Pope, Mr. Adair asked you about the topograhy of Florida. Here is a map of it. On the east is the Atlantic Ocean, on the west the Gulf of Mexico. Those two bodies surrounding Florida, which makes it surrounded by water except at the northern end. Now is that a topographical advantage or a disadvantage from the railroad standpoing? Can there be any through transportation north or south, or east or west?

A. From their standpoint, it is a disadvantage.

[fol. 2085] Recross-examination.

By Mr. Adair:

There is, of course, some through traffic through Key West, but from the standpoint of tonnage, compared with our traffic through other states or across other states, it is a very negligible amount. I couldn't give you the figures on how much fruit and vegetable traffic originates in Florida. I know it is quite extensive. I am not trying to reflect on the State of Florida. I know there is a very large movement of perishables.

(Witness excused.)

P. L. Sheppard, sworn by the defendants, testified as follows:

Direct examination.

By Mr. Alston:

I live in Savannah, Georgia. I am Traffic Manager of the Savannah and Atlanta Railway. It is in the hands of receivers and has been since 1921. This road runs northwestward from Savannah, Georgia, to Camack, Georgia, a distance of 145 miles.

Q. Now there has been offered in evidence in this case, a tariff showing certain rates on logs on your road which

are purported to be lower between three points. Could you give us the history of these rates?

Mr. Alston: The rates I refer to are shown in Claimants' Exhibit 8-A, I. C. C. 115, effective July 14th, 1930, and the points or places referred to are Sardis, East Warrenton and Newington, Georgia.

A. The three points are all local points on our line and there are saw mills at all three of them. I found shortly after I came with the Savannah and Atlanta Railway that a great many of the logs attributary to our line were being taken to points where larger mills are centralized—Augusta and Macon—and I made up my mind to put a stop to it. This not only hurt our mills, but hurt our local communities as they really had a right to the money that should [fol. 2086] flow from the natural resources in that neighborhood, and of course, as long as the logs were going out, we were having that loss. So I proposed the rates that are in effect today and finally we established them in 1924 by notice to the public and our connections that we were establishing the rates. That did stop the flow of logs to Augusta and Macon. These rates we do not consider as compensatory rates. The money that we get out of them sometimes pays and sometimes does not pay for the hauling of the traffic. I mean to say, when I say they sometimes don't pay, that as we have no cars of our own, we have to hire cars for which we have to pay $1.00 a day and when shippers and receivers take a little overtime in the loading and acceptance of logs, we are really out of pocket. Then again, some of these folks who load logs don't take too much interest in the other fellow's property and they damage the car and we have to pay for it, so that, all in all, these rates of ours just about enable us to break even. These rates have not been very freely used in the past three years. Of course, there are two reasons for that. One is old man Depression and another is that a great many of our operators now, including the mill men at the mills at those three points to which the rates apply, go out into a small patch of timber and they take their mill along with them and they cut the logs in the timber and then truck the cut timber to the river, and for that reason the through movement has not been as heavy as it has been. I have been with the Savannah and Atlanta Railway since 1921 and I have always been with this Traffic Department. I am

now its Traffic Manager and I have served in that capacity since 1924, when I changed those log rates. (Page 625-B of Tes.)

Cross-examination.

By Mr. Adair:

I put those rates down. We have saw mills on our road other than those at the three particular points. We have saw mills at Savannah and at Port Wentworth and had [fol. 2087] saw mills at other places up and down the line which would be in and out, off and gone. We made those rates applicable to those three points in particular for the simple reason that there is no local consumption at those particular points and we knew we were going to get the logs back as soon as they were sawed.

Q. And you were willing to take the logs at that rate if you were going to get the lumber at the lumber rate?

A. We didn't want to see them both go. The primary reason, as I stated in the beginning, was to keep the logs from going into points like Macon and Augusta where mills are centralized, and once when the logs got in there the trunk lines got the lumber, and our territory was being divested of its resources without any advantage to us. Yes, we regarded the rates as compensatory if we got the outbound shipments. If you receive the apportionment coming in and you apply the lumber rate out, plus the 2½¢ charge, and incidentally that is our first distance charge, you are compensated. We have to rent cars and pay $1.00 a day for them. We don't own any equipment—only our own engines and coaches and one or two flats that do not go off the road. We pay $1.00 a day. That is the going rate and has been for a good many years; since 1925, anyway. We don't rent any engines. We have the best in the country ourselves. I do not have any idea how much the repairs to these cars, used in hauling logs, amount to per unit. Where repairs are not made and if we let the cars go back damaged, the owner line would make the repairs and charge us under the M. C. B. rules. That is a mechanical matter and I couldn't tell you just what they amount to in a year, but I have had our master mechanic come and kick to me and ask me if I couldn't get this fellow and the other fellow to be more careful and not bust up the cars.

Q. You had no arrangement with any of your shippers [fol. 2088] by which the shipper pays all or any part of the repairs to the cars?

A. We tried once or twice to make collection, but we were not very successful. We have no contract arrangement of that kind.

Court: Where did you say that rate was, Mr. Sheppard?

A. To those three points and those are to local stations. We couldn't establish those rates to competitive points.

Court: What did you say the rate was?

A. It is 2½¢ for the first 25 miles, 3¢ for 50 miles and over 25 miles, and 3½¢ for 75 miles and over 50 miles, per hundred pounds. The distance of the haul from these places would vary, but I should say our average haul would be between 30 and 35 miles. Our rates on logs to other points are the rates prescribed by the Georgia Public Service Commission. They are higher than the rates I have here, but not so much higher. The Georgia intrastate rate is under the interstate rate. We tried to get the Georgia Public Service Commission to hoist these rates into Macon and Augusta and places like that, but we didn't get to first base on that, though they said they were in sympathy with our trouble. The inference that I got was that this Florida rate was the cause of that.

(Witness excused.)

C. H. Ware, sworn by defendants, testified as follows:

Direct examination.

By Mr. Alston:

I live in Norfolk, Virginia. I am General Freight Agent for the Norfolk Southern Railway Company with residence and headquarters at Norfolk, Virginia. I have had about 19 years' railroad experience in the Traffic Department in [fol. 2089] various positions, and I have been with the Norfolk and Southern Railway for the past 13 years. The Norfolk and Southern operates in the states of Virginia and North Carolina and has 931 miles of track, approxi-

mately 100 miles in the State of Virginia and the remainder in North Carolina.

Q. Evidence was given as to the rate on logs on the Norfolk and Southern Railway in Claimants' Exhibit 31-A and the tariff numbers are A-846 and I. C. C. No. A-762. Now the first tariff, that is I. C. C. A-846 effective December 17th, 1932, was applicable to Norfolk and Suffolk, Virginia, and the second tariff, I. C. C. No. A-762, effective June 1st, 1931, was to Hertford, N. C. Now will you tell me whether the last mentioned tariff was subject to transit conditions?

A. Yes, the last mentioned tariff, I. C. C. A-762, is a transit tariff. It furnishes transit rates on logs at certain stations on the Norfolk Southern Railroad, at which a large lumber mill is located. By way of explanation, I would like to say that the Norfolk Southern Railroad is infested with water competition of all descriptions more than any other railroad that I can think of. From Norfolk down to Beaufort, North Carolina, a distance of approximately 200 miles, the line is crossed at very short intervals with natural waterways. Also it is paralleled by the limited water ways. For a number (Page 630-B of Tes.) of years the Norfolk Southern Railroad found it necessary to establish very low water competition rates on logs into mill points which are located on water. Those rates when established, were established under specific terms of the North Carolina Commission. In this respect, from the station to which the timber supply is located, up to the mill point, we would put in a low rate and we would get special permission from the North Carolina Commission so that we would not have to hold that rate as a measure at intermediate points. In 1925, however, we decided to [fol. 2090] tie these lower rates up with the transit arrangements because we were giving the lower rates into the mill points and the outbound lumber was moving in increased quantity by water rate rather than by railroad, so we established this transit arrangement. At Hertford, N. C., in 1931, in order to meet truck competition and we had some success in meeting water competition, we extended the rates upon our line generally in a radius of 50 miles. Of course, in meeting truck competition you have the same competitive conditions at intermediate points that you do at the more distant points, so accordingly in 1931, we extended the transit arrangement to apply at Hertford, N. C.,

only for a few water competitive points to other points upon our line for the purpose of meeting truck competition. I might add that we do not consider that these rates are reasonably measured rates. We never have considered them so, even back in the old days when we met water competition, but we felt they would handle the traffic into the mill point and possibly some small degree of profit to the operative point. In connection with tariff I. C. C. A-846, in 1932 in order to try to recapture and improve movement of logs on portions of the Suffolk Division, we established these very low rates into Suffolk. That is, points on the Suffolk Division and Elizabeth City Branch, that we furnished to expire in one year. In other words, if they were not productive of results we think they should be cancelled and let the normal rates go back into effect. If they don't control the traffic, there is no necessity of continuing the lower rates in effect. Under competitive travel we will have the water with us even if the trucks discontinue operating entirely. We will always have the water with us.

Court: What rate are you talking about? What rate is that?

A. The rates published in this I. C. C. 846. On our Suffolk Division from stations from Russell to Hobbsville, N. C., we have a rate of 2½¢. That is about 29 miles. Then beyond 29 miles up to 50 miles, we have a rate of 3¢ per hundred pounds into Suffolk. That was put in effect September 23d, 1932, and that is still in effect. That was a lower rate for a previous rate. That is furnished subject [fol. 2091] to an expiration date. It automatically expires November 25, 1933, unless we sooner extend it or cancel it. We did get an increase in traffic by lowering that rate. We got back some of the traffic from the trucks. In other words, at the time this rate was put in, we were not handling any of the logs whatever, but we have taken some of that back. The distances don't run above 50 miles in Suffolk. The distance from Norfolk to Suffolk is 18 miles by the shortest route, that is the route of the Seaboard Air Line, but on our line we have to come out of Virginia, into North Carolina and back into Virginia and that is about 92 miles. The rates we have put into Norfolk from this territory do not apply to our line directly. They apply to Suffolk and then on the Norfolk and Western beyond. On account of the long haul by our line direct, we couldn't afford to handle

the freight into Norfolk altogether. I couldn't say how much traffic we have gotten back. For some time we kept regular monthly reports on all truck competition, but we discontinued those reports and I don't think the rates had been in quite a month before we had the first report in and we had gotten 40 cars and prior to that, we had not handled any cars in this territory for several years. We do not have any rate on trainload lots different from this rate. Rates are not made on trainload lots in our territory. The Interstate Commerce Commission does not approve of such rates and I don't believe they allow it as it would be favoring the larger shipper as against the smaller shipper. At one time we did have trainload lot rates. The Norfolk and Southern Railroad had them, but that was a good many years ago.

Cross-examination.

By Mr. Adair:

I couldn't tell you whether those trainload lot rates were higher than the same carload lot rates. They were put in before I went there and cancelled before I went there, but I have seen them in the old tariffs and they did have such [fol. 2092] rates. I couldn't tell whether they were lower than the single carload rates. I do not have the distance on our Hertford rate run. The Hertford rates are generally within 50 miles, but there are some that are longer distances than that where there is water competition. In other words, in some of our water rates we had to put in a lower rate for longer distances because the water distance was so much shorter than the rail distance.

Q. What was that Exhibit No. 32-A which shows that tabulation prepared by the witness, showing that for 68 miles you have a rate of $16.02 per car of 60,000 pounds and shows that at 62 miles you have a rate of $14.04 per car of 60,000 pounds? Those rates are all point to point rates?

A. They are transit rates. Now our rate there is $24.00 per car of 60,000 pounds for a distance of 68 miles and the traffic moves in under that rate and the lumber is reshipped after sawing the logs by our railroad and will come back under this transit rate of approximately $16.00 a car of 60,000 pounds to meet truck competition. For 62 miles it is $19.50 but the transit rate would be approxi-

mately $14.04. That is, if they reship the lumber by our line. (Page 635-B of Tes.) We have increased our Hertford movements very little since we put these rates in in June, 1931. The trucks continue to handle it and the barges have been making some very attractive rates. Hertford is right on the water and they are having a rate that is considerably cheaper than our through lumber rate east. We put those rates in there to get the outbound movement—to control the movement. It does not pay us for cost of handling but it breaks up truck competition and anything we can take away from the trucks, it breaks it up that much. It is a combination of the two. We have to carry the traffic at that rate. We have similar operations into Bellhaven and a similar arrangement into Newbern, N. C., of approximately the same distance. Now, in this particular district, they only cover a few points where the mill owns a large tract of timber and they are getting all of their logs [fol. 2093] from them so it is not necessary to extend it. I can't give you those distances, but they are shorter than these. The truck competition had not entered into it. Those rates are a measurement with the Hertford rates. They are made on the same basis. The transit rate has been in effect just as long as the Hertford rate. I think they made them all subject to the transit rate of 1931, but the open rate that was in effect until we made it a transit rate may have been in effect prior to the water rate at Hertford or Suffolk. I couldn't say exactly how long that had been in effect as an open rate before we tied it up. The rates at Hertford had been in effect in 1921 and tied up in 1925. They were tied up under the transit in 1925. That rate is substantially on the same level now. The same situation exists with respect to Newbern and the other points. This Hertford tariff carries two rates—one a minimum of 40,000 pounds per car, and one based on a minimum of 60,000 pounds per car, both rates being applicable between the same points of origin and point of destination at Hertford. If you take those rates as furnished under these two minimum loads and multiply the rate by the minimum weight so as to get a 40,000-pound car or a 60,000-pound car, the amount of money paid to the railroad should be identically the same, unless there was some error in disposing of the figure or disposing of the rate. It is right that we transport a 60,000-pound car for the same thing that we transport a 40,000-pound car. We get substantially less money

for a 60,000-pound car than a 40,000-pound car, but we are willing to haul 60,000 pounds for the price of 40,000 pounds. We put that in to control the traffic on our line against unregulated facilities. We found it necessary to do that to get the business and to encourage heavy loading. Heavy loading is generally an economical thing for the railroad. All of these points where these rates are in effect are mill points, located on water.

[fol. 2094] Redirect examination.

By Mr. Alston:

These are not the only rates which are in evidence for hauling logs over the Norfolk Southern Railroad. We have the North Carolina Commission scale throughout our line in North Carolina, except to these water points which are described in the two tariffs to which I have referred. Belhaven and Newbern, North Carolina, are both water places. Under ordinary circumstances I do not regard the making of carload rates without regard to quantity, as wise. I do not regard the rates in the two tariffs, I. C. C. A 762 and I. C. C. A 846, as being rates which are fairly compensatory. It is correct that they have been put in because of extreme competition on the one hand with water, both as to inbound and outbound products and the unregulated transportation by trucks on the other hand. These two circumstances have forced this rate structure on us. We have not put it in effect at places where it is not forced on us. We do not have any interstate transportation of logs to amount to anything now. When we did have it, it was between North Carolina and Virginia. We made the joint rate with the Norfolk and Western under this truck competition rate. We put them into Suffolk by our line direct. Now these rates were so low that we couldn't handle the traffic all the way back along our long route, around the whole road into Norfolk, so we put them into Suffolk jointly with the Norfolk and Western Railway. When I said it was 92 miles on our road from Suffolk to Norfolk, I meant that you could come from Suffolk down to Beckford and cross over to Elizabeth City and then over. Down this way it would be in excess of 100 miles. (Page 640 B of Tes.) The Seaboard Air Line route to Suffolk is 18 miles. The truck

passage is shorter than the short rail distance. The truck competition that we had to meet was over a shorter distance than if it had come up to Suffolk over our line and then direct into Norfolk over the Seaboard Air Line, or about 18 miles. That station Suffolk is on a river, but that does [fol. 2095] not effect us. The trucks got the logs from a station called Ryland on the Elizabeth City Branch and between Ryland and Beckford on the main line you could load trucks around Beckford and Parkville and Elizabeth City and bring them straight on in by truck better than you could by any combination of railroad. The trucks take it up through Suffolk into Norfolk, so in making our rates into Norfolk we applied them into Suffolk in connection with the Norfolk and Western Railroad over to Norfolk. The truck haul is shorter than the direct joint rail haul through Suffolk by any railroad. We had in this way rates to Hertford for a number of years. In 1925 instead of giving us the outbound lumber after we gave them the inbound cheap rates, they were shipping by water and we tied them up. It is correct that we were then undertaking to get some of the outbound manufactured product manufactured at Hertford, which is on an inlet of the Altama Sound and which was otherwise going out by schooner.

By Mr. Gutheim:

I couldn't tell you what our log traffic on the Norfolk Southern Railroad would amount to in cars in a year like 1929. I know it wouldn't amount to 10,000 cars. When you get to Edenton on the Norfolk Southern Railroad in order to get further south or west, we have a bridge from Mackeys at that point. The bulk of our traffic comes from this branch running from Suffolk to Edenton, and this branch running from Beckford Junction to Elizabeth City and from Elizabeth City down to Edenton, and the line from Plymouth to Washington, N. C., was through Belhaven and the Columbia Branch. As compared with the lines north and south of the Altama Sound, I couldn't tell where we get the greater part of our log traffic, because of the fact that the traffic has been so upset by the movement by truck that it is hard for us to tell. I have no notion of how much business we stood to regain as compared with the business on the balance of our line when we put those rates in to meet truck competition.

[fol. 2096] By Mr. Adair:

I have never noticed any regulation of the truck in North Carolina.

Q. There are some laws on the books of North Carolina relative to truck transportation and other regulation of it?

A. I believe they have sanctioned something in that direction, but I might add that they are the franchised lines that do not participate in the handling of log traffic. The lumber people are hauling in contract carriers and hired trucks. We do not consider these rates which are in effect at these various points to be compensatory, but we consider the combination of the outbound and inbound movement to be compensatory. We consider that the lumber rates are compensatory, the outbound lumber rates, and we feel that we can take this log traffic, the inbound log traffic, with some little help that we get from the inbound traffic. It is right that we feel that we are not taking the inbound at an actual loss, even where we applied the net transit rate in and get the movement of the lumber outbound, we don't consider we are operating that traffic at a loss and we consider the combination as being compensatory. I couldn't say definitely how long it has been since we had a substantial amount of interstate movement of logs at the now existing interstate rates, but we have not had any since the advent of the truck. Since the trucks started operating in our territory they have been handling the logs into Norfolk on that particular end of the line. We have truck competition rates into Suffolk. It is an arbitrary rate that we had to fix without any relation to any scale or any particular level of rates other than the charges that were actually being made by the trucks. The suffolk rate is lower than the Norfolk rate. (Page 645 B of Tes.) There is no relation between the two rates, except one is higher than the other. In other words, it is not made on a mileage scale. The Norfolk haul is the longer. That is a two line haul and the Norfolk rate is higher than the Suffolk [fol. 2097] rate. Those rates were made on what we found to be the charge of the trucks and that was put in without regard to the rate being for one mile or ten miles, but we had to put in a rate where the mill operators assured us they would give us the business if we put in the rates at those points. We were compelled to make the rates or let the traffic move by the unregulated facilities and have made

a desperate effort to regain not only the tariff traffic, but other traffic by meeting this unregulated competition to the extent that we did. No, there was no reason to make it if we didn't want to. Nobody could make us take it. It is a fact that to a large extent freight rates are made by the competition that you must meet and by what the commodity will bear under the circumstances, but freight rates are not made to meet market conditions but we have found it necessary to make rates to meet truck competition while heretofore we had not been bound to meet competition except by water.

Redirect examination.

By Mr. Alston:

It is correct that we had our railroad and we had our facilities and we had our equipment and we found they were not being used as to these logs and lumber because of the competition of water and of trucks, and we applied to our road and as to these stations what we considered a rational rate and under these circumstances we made the rates which are referred to in these two tariffs, which are very low, for the purpose of trying to get some use of these facilities as to these commodities. I don't consider the log rates inbound and lumber rates outbound to be reasonably measured rates or reasonably just compensatory rates, for the simple reason that we have had to reduce the inbound log rates so much. On the Suffolk Division we have gotten back some of the logs at some distances of around 40 miles. Our road is in the hands of a Receiver [fol. 2098] and has been for some while. We did not cut our rate on the outbound manufactured product at the time we cut the ingoing rate on logs.

Q. During the period we are dealing with, which begins February 8, 1929 and runs up to March 1931, suppose your road had had a substantial log traffic and it had not felt the effect of the truck competition, would you have felt justified in making the rates which you have made in those two tariffs?

(Objection by Mr. Adair.)

A. I certainly would not.

Recross-examination.

By Mr. Adair:

A. Suppose that you had in 1929 a substantial business in the transportation of logs in intrastate commerce, that from four companies alone you had a net revenue, you had a revenue, a gross revenue, at a scale of rates which is substantially the same as those rates which you now have in effect at Hertford, or within ten or twenty per cent. of them, and all of that movement from those four companies moved in trainload quantities in regular movement each day, some of them every day and some of them every other day, and some of them two days a week, and then suppose from those four companies alone you were getting a revenue of approximately $500,000 a year, and you knew that irrespective of your revenue you had from other single car movements, and suppose that someone told you that the revenue would be cut from that trainload movement from approximately $500,000 a year or in three years would be reduced to $5000 a year, if your rate was doubled, do you think you would have increased that rate? Do you think you would have taken any chance of running off $500,000 of trainload movements at substantially this rate you have got in effect at Hertford?

[fol. 2099] A. I don't think I could answer your question. I think you said if someone told me that the revenue was going to be cut. I would have to know a lot more about the situation than I now know.

Q. Suppose you knew, do you think you would have done it, if you had them tied up by contract for all the shipping over your line as well?

A. I think I could answer your question without knowing more about the situation.

Redirect examination:

Q. If getting that $500,000 of gross revenue which Mr. Adair's question holds, had cost you $600,000 in outlay would that have any bearing on your answer?

A. It certainly would have.

Recross-examination.

Q. Suppose your out-of-pocket had been 20% of your revenue?

A. I think we are speculating a lot here, but the reason I told you I couldn't answer your question was because I was not sufficiently familiar with the situation, but what Mr. Alston has said puts a different light on your question.

Q. Suppose your out-of-pocket expense was 20% of your revenue from your trainload movements, and you had a contract insuring you of all the out-bound movements, with a bond to secure it?

A. I tell you, your question is running into elements pretty hard for me to answer, not being familiar with the situation. The rates which I referred to here were refurnished as transit rates to Hertford and Newbern and other points that we had tied in 1931. That rate had been in effect as an open rate on the now existing level since 1925. Those open rates were turned into transit rates in [fol. 2100] 1925 and there was no change in the level of these Hertford rates and no substantial change in the level of the Newbern (Page 650 B of Tes.) rates or Belhaven rates. There was a substantial change in the level of the rate that the shipper pays on the inbound movement, but if he ships the outbound product on the road there is no substantial change in the level. That is not true with respect to our Norfolk rates. We didn't have transit rates into Norfolk. They were put in effect in November, 1932.

(Witness excused.)

(Certified copy of the decision of the Interstate Commerce Commission in this cause, dated July 5th, 1932, headed "Interstate Commerce Commission No. 18364, Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company," was offered as Defendants' Exhibit 1 B. The decision, the report and order of the Interstate Commerce Commission, being its report of January 9th, 1933, and headed "Interstate Commerce Commission No. 18364 Georgia Public Service Commission vs. Atlantic Coast Line Railroad Company," was offered as Defendants' Exhibit 2 B. A certified copy of the opinion of the United States District Court for the Northern District of Georgia, filed on the 24th day of February 1932 in the case of State of Florida vs. The United States of America, being cases 690, 691 and 695, and also the order of that Court in that cause on that date, and the order of consolidation of the several cases in that Court, dated February 24th, 1933, were offered as Defendants' Exhibit 3 B.)

(Objection by Mr. Adair to each of these Exhibits that they are irrelevant and immaterial and lack probative value.)

L. L. DRESCHER, sworn by defendants, testified as follows:

[fol. 2101] Direct examination.

By Mr. Alston:

By name is L. L. Drescher. I am Assistant to the Vice-President and in charge of traffic for the Louisville and Nashville Railroad. My residence is at Louisville, Kentucky, where I am employed by the Louisville and Nashville Railroad Company. I have been in the service of that company for 30 years, all of which time I have spent in the Tariffic Department. I have filled various positions in that department, including the position of rate clerk, assistant chief clerk, chief clerk and my present position is that of Assistant to the Vice-President in charge of traffic. My job is to perform such duties as the Vice-President may call on me to perform. I think I am fairly familiar with the rates on the transportation of logs over the lines of the Louisville and Nashville Railroad during the period beginning February 8th, 1929, and ending in March 1931. Prior to January 27th of this year and extending back as far as September 20th, 1929, our net transit rates on logs from points on the Louisville and Nashville Railroad to manufacturing points on our system, were made on a basis of the scale which has been referred to in this proceeding as the I. C. C. scale. It was the same scale as prescribed by the Interstate Commerce Commission in several cases. I do not have the style of those cases. The scale to which I referred was prescribed after the Pierpont scale. It is not strictly speaking the Pierpont scale but one which was prescribed and adopted by the Interstate Commerce Commission after the decision in the Pierpont case. Prior to the date in September to which I referred, our transit rates on logs were based on a mileage scale which had been formulated by the management of the Louisville and Nashville Railroad and which was generally speaking, slightly higher than the scale we adopted in September, 1929. (Page 655 B of Tes.) I have a statement giving a description of these

rates. This statement is headed "Statement Showing the [fol. 2102] Mileage Scales Applicable on Logs, Carload, Between Points on the Louisville and Nashville Railroad Company." I offer this paper as Defendants' Exhibit 4 B. The column of rates under the first heading here, "Normal Log Scale" is an unpublished mileage scale which we use sometimes in the making of flat rates on logs. That scale, however, is frequently departed from. The next scale of rates under the heading of "Transit Log Scale Prior to September 20, 1929" was the scale we used on our system as a transit log scale for about 25 years prior to September 20th, 1929. That was not a scale that had been prescribed by the Interstate Commerce Commission or any state railroad commission. It was a scale that was formulated by the management of the Louisville and Nashville Railroad Company and was used for more than 25 years. On September 20th, 1929, we adopted as a transit scale the scale of rates shown in the third rate column on the statement, and which are the rates that will be found in the decision of the Interstate Commerce Commission and which has been referred to here as the "Interstate Scale." The rates in that scale now prevail for distances beyond 100 miles. From February 8th, 1929 to September 20th, 1929, the rates stated in the column headed "Normal Log Scale" were in force and effect on the Louisville and Nashville Railroad, with some departures, as flat rates separately and apart from any transit rates, and prior to September 20th, 1929, the scale in the second column was used as a transit scale and that applied everywhere on the Louisville and Nashville System. That operated as a transit scale alongside of the rates in the column headed "Normal Log Scale" as the flat scale to the extent that our flat rates were exactly on the basis of this scale. The logs moved into transit point on a flat log rate, whatever those rates may have been, and when the manufactured product was shipped out of the saw mill, we refunded our carrying charges down to the basis of the rates shown on the column headed "Transit Log Scale Adopted September 20th, 1929, L. & N. R. R., I. C. C. [fol. 2103] A. 15965." On September 20th, 1929, the rates in the third column went into effect. I should perhaps qualify that a little bit further and state that this was true as to interstate business and in many instances on intrastate traffic. Now in Alabama, for example, we were required under order of their commission to provide those rates as

flat or open rates and not tie them up with transit privileges. For the moment I don't know whether that was done on intrastate business through any of the other states in which we handled business or not, but it was true of Alabama. The rates in the third column are practically the same as the rates which were known as the interstate rates prescribed by the Interstate Commerce Commission in its docket No. 18364. Through the period beginning February 8th, 1929 through March 1931, I don't know of any rates for the hauling of logs lower than those on the Louisville and Nashville Railroad shown in the three columns which I have described in Exhibit 4 B. The Louisville and Nashville Railroad has lines in Illinois, Indiana, Kentucky, Tennessee, Alabama, Georgia, Mississippi, Louisiana, Florida and North Carolina. In Florida we have a line from a point called Flomaton, Alabama, which is west of the Alabama-Florida state line, extending eastward to River Junction, Florida, a distance of about 245 miles, and we have a branch leading off from that up to Lakewood, Florida, called the Yellow River Railroad. The line from River Junction goes through Pensacola.

The Claimants offered their Exhibit No. 4 A as Supplement 19 to I. C. C. No. A 16022, effective January 27th, 1933, to expire August 6th, 1933, and applicable on logs from Linsey, Kentucky, to Knoxville, Tennessee.

That rate is published in Supplement 20 to our tariff I. C. C. 16022. It applies on logs, carload, from Linsey, Kentucky to Knoxville, Tennessee, subject to transit rules and regulations and the rate is $29.50 a car. Linsey, Kentucky, is a station on a branch line of our Cumberland Valley, Kentucky, Branch which extends from Corbin, Ken- [fol. 2104] tucky to Norton, Virginia. The distance by the Louisville and Nashville Railroad from Linsey to Knoxville is 149 miles. Some time ago we were informed that there was a proposed movement of logs from Linsey to Knoxville and that unless we made the rate available by truck to Knoxville, thence to Middlesboro, Kentucky and thence by the Southern Railway to Knoxville, we would lose the traffic. After giving the matter due consideration, we decided to reduce the rate on logs from Linsey to Knoxville and we published this rate of $29.50, effective January 27th, 1933 and to expire August 6th, 1933, unless sooner cancelled, changed or extended. That has not been can-

celled or changed in any way. It remains today as it was when we published it—$29.50 a car. We have reached no decision as yet as to whether we are going to extend it beyond August 6th. There was no minimum weight shown in connection with the rate. Claimants' Exhibit 31 A, being the Louisville and Nashville Railroad tariff I. C. C. No. A 16120, effective June 16, 1932, from stations on the Tennessee and Western Railroad to Collinwood, Tennessee, is published in Louisville and Nashville Railroad tariff I. C. C. A 16120. This tariff shows a rate of $7.20 per car on logs in carloads to be manufactured and reshipped via the Tennessee Western Railroad from Iron City, Corning, Geneva, Hardwick, Starkey, Yorkfield and Yates, Tennessee, to Collinwood, Tennessee. These are stations on the Tennessee Western Railroad, which is a short independently owned line connecting with the Louisville and Nashville Railroad at Iron City, Tennessee. The rate of $7.20 which is now in force, had originated in a rate of $5.00 per car that was established back in 1916. That rate was issued at the instance of the Tennessee Western Railroad Company, which company was then (Page 660 B of Tes.) owned by the Tennessee Valley Iron and Railroad Company, which also owned a large tract of land through which this railroad ran and which it was stated at the time, covered about 55,000 acres of merchantable timber. It was stated at the time the rate was published that the operators of a spoke factory [fol. 2105] at Collinwood wished to buy logs from the company who owned the timber through which the railroad ran, and the rate was furnished in accordance with those instructions, whatever they may be, from the Tennessee Western Railroad. The Louisville and Nashville Railroad operated the Tennessee Western Railroad on account of having the owners of that line under a contract. It is correct that there was a manufacturing plant at Collinwood and that the owners of the company owning the timber also owned the railroad and they wanted to sell their timber or logs to the manufacturing plant. That railroad is approximately 17 miles long.

Q. What is the present status of it?

A. We were considering the matter of cancelling our contract for the operation of the railroad.

Mr. Alston: If the Court please, we objected to these two Exhibits 31 A and 32 A at the time they were offered and

our examination of the witness as to them is not a waiver of that objection.

Cross-examination.

By Mr. Adair:

That $5.00 rate to Collinwood continued from the date it became effective, August 4th, 1916, until the effective date of the general increase under the Director General, General Order No. 28, effective June 25th, 1918. The $7.00 rate is in effect after applying the two 25% horizontal increases of 1918 and 1920 and the general reduction in 1922 of 10%. With those increases that rate has been in effect since 1916. In Exhibit 4 B, Column 5, appears a scale of rates regardless of weight, up to 100 miles, commencing at $12.00 per 10 miles and ending at $20.00 for 100 miles. That scale of rates is applicable over the entire Louisville and Nashville Railroad system south of the Ohio River.

[fol. 2106] (Objection by Mr. Alston that the answer deals with transactions beginning January 27th, 1933, which was after the period under investigation had ended.)

That rate will apply on our Florida lines under transit arrangements. It is true that nearly all of the logs that moved on these lines moved under the transit rates. I don't know whether the level of our transit rate has been usually far distant from the level of the open rate on the Atlantic Coast Line Railroad. I have not made any direct comparison of that kind. Those rates in the fifth column apply to cars regardless of weight and the 80,000 pound car is the same price as the 40,000 pound car. Those rates were not put in effect over a part of our lines at an earlier date than January 27th, 1933. They were made effective everywhere at the same time. The change was made in January 1933 from the rate which we then had in effect, to enable the Louisville and Nashville Railroad to handle some traffic and to enable the saw mill operators on our line to meet the competition that they had to meet. We, of course, are always looking out for some means of getting traffic for the Louisville and Nashville Railroad. We wanted to haul lumber and forest products and we established these rates with the hope that it would enable us to haul that kind of traffic.

Q. You are willing to haul the logs under the fifth or last column if you can get the outbound movement at the current rates?

A. That depends upon your conception of the word "willing." It seems to be the best we can do at this time and we have to take what we can get. I sincerely hope we won't have to continue that much longer. I cannot say whether this reduction in our rate resulted in any substantial increase in our log traffic. I feel as certain as a man can feel of anything, that that rate will not be continued permanently, but up to the time that I left Louisville, no decision had been reached as to whether that would be extended beyond August 6th. These rates are substantially the rates com- [fol. 2107] mensurate with those in effect in most of the territory south of the Kentucky border, which is served by the Louisville and Nashville Railroad. That is to say, most of the manufacturing points in that territory. I understand that it is the scale that is in operation on the Illinois Central, for example, and the N. C. and St. L., and the Frisco and some portions of the Southern Railway. I do not know how this "regardless of weight" feature was reached in fixing the scale. I cannot understand the working of any man's mind that would make a rate of any commodity regardless of weight. I believe it is true that proportionately the cost of transporting an 80,000 pound car is less than that of 40,000 pounds, but I am not qualified as an authority on matters of that kind. Claimants' Exhibit No. 65A is a certified copy of a form of contract for the operation of logging trains, which is published by the Louisville and Nashville Railroad. This one was published as I. C. C. 16072. This is the tariff of 1931. We have a number of contracts which reflect the terms and conditions of this tariff. I don't know just how many there are, nor can I say just where they apply, except that they are applicable only over certain portions of our line. I have a map shaded over the portions of our line at which we entered into contracts for logging trains. I understand that the logging contracts to which I refer as being in force and effect over the indicated portions of our line, are upon substantially the same basis as charge per car, as the contract published in this tariff. We still furnish that tariff. The lines to which I refer include all of our lines in Florida, except the line from Flomaton to Pensacola, and it included the line leading down from Georgi-

anna in Alabama, to Raceville in Florida, and from Duvall in Alabama down to Crest View in Florida, and from Myrtlewood in Alabama, down to Flomaton, and from Camden, Alabama, down to Ladola.

Mr. Adair: May I ask here if Mr. Alston will state for the record the relationship between the Atlantic Coast Line Rail-[fol. 2108] road Company and the Louisville and Nashville Railroad?

Mr. Alston: The Atlantic Coast Line owns 51% of the voting stock of the Louisville and Nashville Railroad Company. I will state that the Atlantic Coast Line Railroad Company does not undertake to exercise any control over the policies of the Louisville and Nashville Railroad Company.

By Mr. Gutheim:

This rate of $29.50 per car from Linsey to Knoxville is available for the use of any saw mill operator at Knoxville, Tennessee who will conform to the terms and conditions of our log tariff. I do not know who is actually using it. For the years 1931 and 1932 there was no movement of logs to Collinwood, Tennessee, on the basis of that $7.20 rate. My opinion is that any movement of logs into Collinwood for manufacture into lumber products would have to come back through Iron City, Tennessee, to find a market, because Collinwood itself is a very small place and the only way to find a market for it of any size that I know of, would be by coming out through Iron City. That is, if you are going to move by rail. I don't know about the trucks.

Q. In your 30 years of experience with the Louisville and Nashville Railroad, has the lumber production on that railroad tended to remain in the same locality or has it gradually gone south?

A. Timber has been cut out gradually and on our road it has not been replaced or renewed as fast as it has been cut out. It is a fact that there is a branch on the Louisville and Nashville Railroad that runs from Iron City to the west, just as does this Collinwood Branch, and goes up to West Point and Pinkney. I think it is correct that that was a timber producing area and that the Louisville and Nashville Railroad is now before the Interstate Commerce Commission to offer a petition to authorize its abandonment.

[fol. 2109] Q. Are they not also asking that specifically on the ground that their timber resources, which are the lowest sources of traffic, are about exhausted?

A. I have not read the application, but I have read similar applications and they have outlined very clearly just what the reasons were for making the application. I think it would be a fair statement that the Louisville and Nashville Railroad originates little logs and lumber products in that area, but for the most part gets that classification for traffic on the southern end of its lines. The bulk of the timber that the Louisville and Nashville Railroad originates comes from points on the southern end of its line and from Eastern Kentucky.

Redirect examination.

By Mr. Alston:

The lines of the Louisville and Nashville Railroad Company on which trackage contracts have been made for hauling logs, are lines of very light traffic. In fact, I think along with the line leading into Owensboro from Russellville, Kentucky, they have the lightest traffic density of any parts of the Louisville and Nashville Railroad System. We refer to all of those except the line from Pensacola to River Junction, as branch lines and that one from Pensacola to River Junction is hardly more than a branch line. The mileage of the Louisville and Nashville Railroad is about 5,100 miles now. The mileage covered by the parts of the tracks to which I have just referred is about 503 miles.

Mr. Alston: If the Court please, we object to the examination of this witness as to rates and schedules covering a period other than the restitution period February 8th, 1929 to March, 1931, for the reasons that the conditions were not the same and that they are not analagous.

[fol. 2110] Mr. Gutheim: Could I pursue this matter of forest products to ask the witness where the Louisville & Nashville originates its forest products on the lines between Flomaton and New Orleans?

A. What do you mean by originating forest products? Do you mean logs or product from the saw mills?

Q. I mean logs in the first instance, and lumber other than logs, separately and together.

A. There are a few saw mills down on our line between Flomaton and Mobile. There are some at Mobile. There is no standing timber of consequence that I know of immediately adjacent to that part of our line from Flomaton to New Orleans.

Q. Would it follow that the Louisville and Nashville Railroad would handle very little in the way of log traffic to such mills?

A. I don't know how to answer that question. I rather not answer that question because I have no figures before me.

By Mr. Adair:

Q. Do you know whether or not you have in force and effect those contract agreements for distances in excess of fifty miles, those track agreements?

A. To the best of my knowledge there are none in excess of fifty miles.

(Witness excused.)

J. E. Willoughby, a witness sworn by defendant, testified as follows:

Direct examination.

By Mr. Alston:

[fol. 2111] I am a citizen of and have a home in Blount County, North Carolina, and have a house and home in Wilmington, North Carolina. I am Chief Engineer of the Atlantic Coast Line Railroad. I have been associated with the Atlantic Coast Line since 1913. I was Assistant Chief Engineer from 1913 to 1915, and have been Chief Engineer since 1915. Before I went with the Atlantic Coast Line Railroad I was a Civil Engineer. I am a graduate of the engineering school of the University of Alabama. I graduated in 1892 and for the next eight years I was in the land and engineering corps of the Louisville and Nashville Railroad. From 1902 to 1912 I was Engineer of Construction for the Louisville and Nashville Railroad and Chief Engineer for some of its subsidiary lines. I was then one year in foreign service and came to the Atlantic Coast Line on June 1st, 1913, as Assistant Chief Engineer. It is a part

of my duties to be acquainted with the construction of the Atlantic Coast Line Railroad tracks, its topographical lie and the conditions of the territory through which it runs, from an engineering standpoint, the cost of maintenance, the quality of construction, and all matters of that sort relating to the Atlantic Coast Line Railroad's right-of-way, its rails, tracks and accessories. I am responsible for the location of new lines and additional facilities, construction thereof and maintenance of the property, and I have the direction of the valuation and reproduction estimates. I was given charge of the valuation work of the Atlantic Coast Line Railroad about 10 years ago. When the valuation work was first organized in 1913, the responsibility rested on Mr. Lyman Delano, then Assistant to the President, and then as his duties increased with the added responsibilities, he turned over to me the direction of the valuation. I have examined Exhibit No. 80A prepared by Mr. Saunders, a witness for the Claimants in this case, which gives the basis of apportionment of the various primary accounts, Maintenance of Way and Structures, in the present case. I do not agree with the basis of apportionment as shown by that [fol. 2112] Exhibit No. 80A. The basis of apportionment is evidently on the theory that the cost of maintenance of track in Florida is the average of the cost to the system, and further that the relations of average miles operated, relation of tons of revenue freight, relation of freight locomotive miles, and other relations given in the basis of apportionment is in error, because it seeks to join together the primary accounts representing the expenditure for maintenance in a wholly arbitrary way. The Atlantic Coast Line Railroad extends from Virginia south more than 1,000 miles, and west to Montgomery, and covers the South Atlantic coastal plain and the Peninsula of Florida, and a part of the Gulf coastal plain. The soils on which the road is constructed vary greatly. The soils in Virginia, the Carolinas and Georgia are sandy loam, clays and sand-clays, overlying marble and granite. The soils in Florida are wind-blown sands, coming in from the seashore, and overlie salt limestones. These limestones, particularly what is known as the callow limestone, are corrodus. The type of soil or floor on which the railroad is built affects greatly the maintenance cost. In the Virginia and Carolinas the Atlantic Coast Line Railroad crosses the great streams that flow from the Appalachian territory eastward and southeastward to

the Atlantic. These streams have been provided for crossing with permanent structures. In Florida the only stream of any magnitude crossed by the Atlantic Coast Line Railroad is the St. John's River. All other streams are minor ones. Along this distance of 1,000 miles there are great varieties in the climatic conditions. It has long been established that the climatic conditions affect the energy of the persons who exert physical labor, or who are engaged in physical labor. It has also been definitely demonstrated that variations in the climate, as between heat and cold, within such limits as prevail in Virgina and the Carolinas, develope higher valuation energy than the more uniform heat of Florida. Every item that pertains to the cost of [fol. 2113] construction and maintenance of the Florida line is obtained at a greater cost than the average for the system. That is, labor and materials. The Atlantic Coast Line Railroad occupying as it does the South Atlantic coastal plain and the Peninsula of Florida is not a mountainous road, but the peculiar feature exists that insofar as the mountainous condition of construction obtains, Florida is the most mountainous portion of the Atlantic Coast Line Railroad's main track, along the coast from Tampa, across the state and thence along the Atlantic Coast to Richmond. We have a greater amount of curvatures. There are more curves between Jacksonville and Tampa, 240 miles, on the main line than there are between Jacksonville and Richmond, 680 miles. Now, in speaking of curvature, I speak of curvature relative to its effect on maintenance. Where the radius of the curve is two miles or more, the effect as far as maintenance is concerned is the same as on the track lying straight. Florida does not have in normal times the labor necessary to maintain it, the labor necessary to maintain the tracks in Florida must be imported on the Atlantic Coast Line Railroad. The principal importation of track labor is from the State of South Carolina. The Atlantic Coast Line Railroad only imports laborers for its own use in Florida, at its own expense, but this importation of labor, it is importation of labor imported unwillingly insofar as the Atlantic Coast Line is concerned, and recently found from investigation that we imported in not only the labor we needed, but labor that other industries had taken away from us.

Q. Has there been any substantial amount of construction of new line in Florida during the 5 year period ending December 31st, 1930?

A. During the consolidation period the principal new line of second track construction was located in Florida and aggregated 257 miles. Now, new constructions require at least a more intensive maintenance than the seasoned and stable [fol. 2114] roadbed. By the consolidation period for a new line of railroad, I mean the consolidation and development of the railroad to the purposes for which it is constructed. That requires a period of several years after beginning operation.

Q. Will you be kind enough to take the accounts of maintenance under the heading "Maintenance of Way" in this Exhibit 80A, and beginning with Account 201, Superintendence 272, Removing Snow, Ice and Sand, and discuss Mr. Saunders' allocation of them.

A. The basis of apportionment made by Mr. Saunders of accounts 201, Superintendence, and 272, removing snow, ice and sand, is the relationship of the average miles operated, and he uses for the system mileage 5,847 miles and for the Florida mileage 2,191 miles. The actual system road mileage was 5,161 miles and the actual Florida road mileage was 2,067. Now superintendence is not dependent directly on the number of road miles. The superintendence is affected by the ability of the supervising officers to pass to and fro upon tracks which are being maintained. In Florida we have two main lines, with a series of connecting branch lines and the supervising officer finds greater difficulty in getting over the road while he is at work there when the apportionment track is more largely main line. Now, the relation Mr. Saunders works out is 37.47% for the two accounts, superintendence and removing snow, ice and sand. Now, as to removing snow, ice and sand there is no relation whatever as to superintendence. On the Atlantic Coast Line we have but limited ice and snow, and that little ice and snow that we have occurs in Virginia and the Carolinas, and when I say but little ice and snow, I mean but little ice and snow that require track labor for removing. The track labor for removal of what ice and snow that may obtain in these upper state is principally about the frogs and switches. In Florida [fol. 2115] we have the wind-blown sand, because the sand is without cementing clay and it will blow readily from one

part of the roadbed to another part of the roadbed repeatedly, and over the rails. There is a considerable portion of account 272 that represents the removal of sand, but the whole account is insignificant, being less than one-tenth of one per cent of the maintenance of way expenditures. Mr. Saunders groups under roadway maintenance, account 202, track-laying and surfacing, account 220, roadway machines, account 269, and small tools and supplies, account 271, together, and gives them the weight of ⅔ of the average miles operated, and ⅓ to the relation of tons of revenue freight. Now, the roadway maintenance and track laying and surfacing are entirely two different classes of work resulting from different conditions. Roadway maintenance is the maintenance of the roadbed and the cutting of the right-of-way. This maintenance grows principally out of the weather conditions and the growth of vegetation. It is not affected in any appreciable extent by the revenue-tons of freight. It is affected almost wholly by the rains, winds and growth of vegetation. These affect operation whether we run trains over them or not. The roadway maintenance would be essentially the same over the Atlantic Coast Line whether we run any revenue trains or not. The track laying and surfacing is just the opposite. The need of restoring the cross level and line of tracks and of replacing the rail and ties grow out of principally the tonnage that passes over it, and it has no relation whatever to the average miles operated. We have rails which on the basis of the wear of the rail, the rail will continue to exist for more than 800 years, and we have other tracks in which the rail will be removed within the year 1934. The track laying and surfacing being almost wholly dependent on the ton miles and the roadway maintenance not in anywise dependent, not in any additional amount dependent on the per ton mile, the relation he gives is an absurd relation. Now, as to account 271, [fol. 2116] small tools and supplies, this account may as well be included with accounts 202 and 220, because the small tools and supplies are the units with which the laborer does the work. The accounts 202 and 220 are labor accounts. Now, roadway machines, account 269, on the Atlantic Coast Line Railroad that are charged to maintenance of way cover repairs to the machinery principally and do not cover any cost for usual run of machinery such as results from the charges to small tools and supplies. In the relation as

worked out by Mr. Saunders, he ignores the replacement charges, which result to operating expense by reason of property being retired and replaced. The charge to roadway maintenance is almost, or is largely free of replacement charges, whereas the charge to roadway machines for replacement represents a direct charge. Now, the effect of the group is to put under the same treatment four accounts, of which three of them do not bear any relation each to the other. The next group made by Mr. Saunders is account 208, bridges, trestles and culverts, account 212, ties, account 214, rails, account 216, other track material, and account 218, ballast. He assigns a relation of one-third tons of revenue freight and two-thirds cost of reproduction new. Under the I. C. C. classification, under which the charge of operating expenses is made, the treatment of account 208 is different in principle from the treatment of accounts 212, 214, 216, and 218. Accounts 212, 214, 216 and 218 carry operating expense charges based on the cost of replacement in time, after the time of replacement. That is, the railroad company charges to operating expenses replacement at current market prices. Now, account 208, bridges, trestles and culverts, are repaired and replaced—the entire original cost of the culvert is charged to operating expenses and the entire cost of replacement is charged to capital account. This, therefore, sets up in a group five accounts, one of which does not conform to the other four. Now, in the cost of trackage, that is, the repairment and replacement of ties and that of rail are entirely different. The rails are re- [fol. 2117] placed principally from wear. The ties are replaced on the Atlantic Coast Line principally from decay. And often times rails go by obsolescence, due to the introduction of heavier locomotives for economy of locomotion. That requires heavier rails, and when heavier rails are applied the weight f the rail or wear of the rail that is released is charged to operating expenses at the price at which the new rail is bought and only the added weight of the rail is capitalized. Now, the relation of the three to the revenue ton miles is wholly in error in regard to ties and rails, and for an entirely different reason. The tons of revenue freight have but little to do with the replacement of ties. The ties are replaced from decay, which represents weather effects. Now, in Florida ties do not last as long as ties do in other parts of the system. This is on account of the

weather conditions. Now, in connection with the valuation of Atlantic Coast Line Railroad property under the valuation Act, we made a very careful study of the ratio of the service life of ties, and when we take Virginia at 100 per cent, then the relation becomes North Carolina 90 per cent, South Carolina 93 per cent, Georgia 94 per cent, Alabama 77 per cent, and Florida 74 per cent. That means to replace under like conditions in Florida, or that means in Florida a tie under like conditions in Virginia would last only about three-fourths as long as in Virginia, and therefore the cost of buying ties, both from purchase of material and labor charged to track labor and supplies, will be approximately one-third more than the same cost in the State of Virginia. Now, the cost of reproduction new has no bearing whatever on the cost of maintenance of the railroad.

Q. Just a minute. Over what period of time, over what study did you arrive at those percentages, over what period of time?

A. It extends from 1902 to 1917. That valuation date was [fol. 2118] June 30th, 1917. Now, the reproduction cost new of any structures has no direct relation to this cost of maintenance, what we call a permanent structure, which is made permanent so that the cost of maintenance will be small. What we call a temporary structure is temporary work. Now, take the account, ties, which for the system as given by Mr. Saunders in his Exhibit, the reproduction new for the ties is $10,694,951, and the reproduction new for rails is $20,117,445. That is, the reproduction new for the rails was about twice the cost of reproduction of ties. Now, in 1930 the maintenance expense of ties was $1,785,886.00, and the maintenance expense of rails was $588,218, with capital investment for rails of double approximately of that of ties. The maintenance expense in 1930 was about one-third the cost for rails of the maintenance expense for ties. That means that the unit cost, the unit reproduction cost new for rails is six times out as compared with the reproduction cost new of ties, when you are getting the cost of maintenance. Now, the other track material, account 216, is properly included with the account 214, rails, because the principal items in other track materials, or the principal reasons for including expenditures for other track material are the same as rail, to-wit: tonnage moved over it. Now, the 1930 expenditure for rail, $588,218 is about three-fourths of the

total reproduction new of cost of rail on 1917 basis, whereas the cost reproductions new for other track material, in 1930 was 10 per cent, or approximately 10 per cent of the cost reproduction new of the other track material in 1917. Now, as to ballast, account 218, the Atlantic Coast Line Railroad has but little ballast in Florida. Its Florida Lines are ballasted partly with Florida salt limestone and partly with gravel imported from Alabama, and partly with slag imported from Birmingham, Ala., and while the amount of ballast in Florida is relatively less than the amount of ballast in the other parts of the system, the cost is generally greater. The soft crushed limestone in Florida under the [fol. 2119] period under review, cost approximately the same as the granite ballast in Virginia at the pit. The next group of accounts which Mr. Saunders has bracketed together, are accounts 221, right of way fences, account 227, station and office buildings, account 229, roadway buildings, 247 telegraph and telephone lines, and account 265, miscellaneous structures. The charges on the Atlantic Coast Line of account 247, telegraph and telephone lines, cover labor only and the charges for operating expenses for the other four accounts cover labor and material. Now, right-of-way fences have the further difference in their cost of maintenance, in that the right-of-way fences are largely destroyed by fire, whereas the station and office buildings and the miscellaneous structures are but little subject to fire. As to the roadway buildings, about the only fire destruction lies in the carelessness of the negroes in the roadway buildings. Now, these station and office buildings and roadway buildings and miscellaneous structures, have as a large element in the cost of maintenance the roof and the paint which protects the building. The paint in Florida being subject to hotter sun, deteriorates somewhat more quickly than the paint in the other parts of the system, and in like manner the composition roofs in Florida, being subject to a hotter sun, deteriorate more rapidly. Now, the buildings of all types in Florida are principally wooden structures, and other than the protection given by the roof and paint, these buildings are subject to the weather elements. There are some costs of replacement. Now, Mr. Saunders has assigned the relation as between the system in Florida solely to the cost of reproduction new. As I said before, the cost of reproduction new has no fixed relation to the cost of maintenance. The next

two accounts which Mr. Saunders groups together are accounts 225 and 249, crossings and signs and signals and interlockers. Now, the weight which he gives, one-half to freight train miles and one-half to cost of reproduction new, the remarks heretofore made with regard to cost of [fol. 2120] reproduction new apply. As to freight train miles, the cost of maintenance for crossings and signs has no relation to freight train miles. The cost of maintenance of signs has some relation to the miles of road and considerable relation to the laws in the State with regard to the requirement of signs. The principal expenditures during the time under investigation and at the present is the demand for the public users of the highways for types of rail level crossings which will effect a smooth surface for the highway used, and are not in any way connected with the freight train miles. Such parts of the crossings and signs as may be chargeable under the I. C. C. classifications for over and under-grade crossings have no relation to freight train miles. Now, signals and interlockers have a very slight relation to freight train miles. The principal cost of maintaining signals and interlockers is the supervision, because the signal appliances must be examined from day to day and tested from day to day. The repairs are small, and the repairs that are affected by freight train locomotives or single interlocking plans are insignificant with the traffic which the Atlantic Coast Line Railroad has. That is, the number of movements made by signals and interlockers by reason of our traffic is not sufficient to produce any considerable element of wear, such as might be accruing on a railroad having dense traffic. The next two columns grouped are accounts 231, water stations, and account 233, fuel stations. The relation is given as ⅓ the freight locomotive miles and ⅔ to cost of reproduction new. The same remarks I have made above as to reproduction new apply. As to maintenance of water stations, the water station includes the building and that has no relation whatever to the freight locomotive miles. The pumping machinery and pipes have some slight relation to the amount of water consumed, but the principal difficulty we have with regard to the pipes is the incrustation in the pipes, which results from the character of water that flows through them. In Florida the water has a great deal of hydrogen sulphuride [fol. 2121] and calcium salt and some common salt, and

these features are independent of the amount of water that is pumped through them, but is dependent on the amount of water that stays in there during the period the locomotive is not taking water. Now, take the cost of repairs for the water stations. During the period under review, the total force which the Atlantic Coast Line had for repairing these stations consisted of one mechanic, one helper and one laborer and one traveling pump repairer for each division. That is, twelve men maintained the pumping stations for which the cost was made and charged to operating expense. There is another thing in regards to his treatment of water stations and fuel stations generally, is that his Exhibit 80A, ignores the additions and betterments that have been made to the property since June 1917, as illustrating fuel stations. The Account 19 speaks of fuel stations for the system $455,385.00 and for Florida $90,848, which means a relation of 19.95%. Now, since June 30th, 1917, and prior to December 31st, 1930, we constructed twenty-one reinforced concrete holding stations, of which ten were located in Florida and seven of the twenty-one represent additions to property, and five of the additions were for stations in Florida. Therefore, if we should take the figures used by Mr. Saunders and add to them the additions and betterments for the period from 1917 to 1931, we would have——

Q. Do you mean on this particular account?

A. Yes, sir; on this particular account—the fuel stations, we would have a total for the system of $1,105,805, and a total for Florida of $404,788.00, from which should be subtracted the charges for operating expenses due to proper repairment and replacement, of which the system is $252,784.00 and Florida $72,605, leaving as of December 31st, 1930, a carrying charge for system of $853,021.00 and Florida $382,176, or a relation of 38.94%, which is approximately twice the relation in favor of Florida, than the one [fol. 2122] worked out by Mr. Saunders. In other words, applying his own method of calculation and method of figuring to that figure produces that result. He is in error about 100% approximately. Now, account 235, shops and engine houses, insofar as those expenditures appear in the maintenance of way account are buildings, and the remarks which were made in regard to accounts 227, 229 and 265 apply. Now, Mr. Saunders, however, for shops and engine houses gives one-fourth weight to relation of freight locomotive miles, one-fourth relation of loaded and empty

freight car miles, and one-half to relation of cost of reproduction new. I have nothing further to say as to the error, assuming that the operating expenses for maintenance have any relation to cost of reproduction new, but as to freight locomotive miles affecting shops and engine houses, it is a straight error because the shops are not touched by the locomotive, they are simply shelter for the locomotives or housing for the machinery in the shop buildings. There would be a slight effect on turntables and the tracks laid thereon, which would be also included in this account 235—that would have some relation to the number of locomotives that went across the turntables, but the incorporation of loaded car miles or loaded and empty freight car miles is an absurdity, insofar as they effect a relation between shops and engine houses, maintenance costs. The next group is account 274, injuries to persons; 275, insurance; 276, stationery and printing, and account 277, other expenses. Now, in relation to injuries to persons, that is, on the number of men employed and the materials handled, and it has no relation whatever to the average mileage operation. The injuries to persons in maintenance of way account are injuries to persons who work on the right-of-way and track, and not injuries to persons working on the train service. Neither had it any relation to the freight train miles. In particular regard to injuries to persons, the item in Florida is not a considerable [fol. 2123] item. The Atlantic Coast Line Railroad's record of injuries to persons is good. Now, insurance does not have any relation to mileage operation or freight train miles, because the insurance is insurance against fires to station and office buildings in this account. We do not insure our roadway buildings and there is no insurance expenditures in connection with roadway buildings. The station and office buildings are not set on fire by the passage of freight train miles. To consider the re-valuation of reproduction costs new of one-half weight given to shops and engine houses, Mr. Saunders has ignored the additions and betterments that have been made to the property from 1917 to 1930. If the additions and betterments were added to the figures which he gives in his Exhibit 80-A, the total would be for the system for shops and engine houses $5,480,481.00, and for Florida $234,604.00, and the relationship would be 37.12 instead of 14.20, as used by him. That is, his relation is in error by 161%. The first basis of criti-

cism is that he has assumed that maintenance conditions in Florida are the average for the rest of the system. That is wrong. The next is that he has assumed that the cost of reproduction new has any relation to the system proper. That is wrong. And furthermore, the arbitrary expressions which he has made, average mileage obtained, and revenue freight miles, etc., are all purely arbitrary and have no relation in fact to the maintenance of the Atlantic Coast Line Railway. The Atlantic Coast Line Railroad did file objections to the values shown in the I. C. C. Valuation Docket 930 which was used by Mr. Saunders. When the valuation tentatively made was served on the Atlantic Coast Line Railroad, we filed the objections later provided for in the Act, and had conferences and hearings extending something over a year. The Commission, after about two years or more, rendered a decision. We protested the methods of the Commission in arriving at the valuation, because these methods very grossly undervalued the cost of reproduction new by the Atlantic Coast Line Railroad. [fol. 2124] In my summary, I have referred to the use of his alleged values of June 30th, 1917, without taking into account the improvements since then in certain specific instances.

Q. Mr. Willoughby, I want to call your attention to some of the evidence of Mr. R. C. Baptist, who was sworn for the claimants and whose testimony begins at page 158 of the transcript of May 11, 12 and 13, 1933, hearing, and it is dealing with the construction of certain miles of road, for the purpose of making connections which are described in this evidence, and to the end that a through line might be made down to Palatka from about Hines. He stated on page 160: "We estimated the cost of building eight miles of railroad at $2,500.00 per mile." Please comment on that cost or estimated cost.

A. That cost would not produce a railroad such as the Atlantic Coast Line Railroad operates. If the rail should be as light as 56 pounds per yard, there would be required 88 tons of rail, and in the period under review that rail, if purchased for some track where it is released on account of increase in axle loads, the rail itself would cost $2,640 per mile. The other track material would cost about 20% of it, $528.00, and the labor for laying that according to our experience on road-bed that has been repaired, would be about $1,500. The ties, we would put 2,900 ties per mile,

and those in Florida were worth about 85¢ apiece, or $2,465.00, or a total of $7,133.00 for the track. This assumes that the track would be ballasted with sand. The Atlantic Coast Line tracks are not ballasted entirely with sand. I am talking about track material, the cost of material and the cost of ties to build a railroad over which you could haul log cars of 40,000 pounds. I am talking about what I call a railroad—two lines of railroad, standard railroads supported by the ties. That would be the cost of track material and labor for laying the same. That includes nothing but the right-of-way and facilities—it is simply the bare railroad. Nor does that include anything for grading. If we should add the grading for such a railroad as we could operate our train over, the grading for a flat sort of [fol. 2125] country as in Florida, would be $1.00 a foot and that would not be anything like the average or $12,510 approximately for a tram road per mile over which loads of logs up to 40,000 pounds can be safely transported, not including the cost of stations and other facilities and accessories that are required therefor. If we were to operate an engine of 333,000 pounds, like the engine which the Atlantic Coast Line used on the log train between Hines and Palatka, and if we were going to handle 40 cars to a train and were to use rail that we expected to preserve, we would use rail of no less than 56 pounds to the yard and supported by 2,900 ties per mile. When I speak of the period under review, I mean the period from February 8th, 1929, to March, 1931. That is the period we call the restitution period. The average cost of constructing a railroad in Florida during this period was about $35,000 per mile. Some of the construction of the railroad by the Atlantic Coast Line was very much greater. That was not the cost of constructing a tram road. That was the cost of constructing a railroad such as the Atlantic Coast Line constructs. It would cost the Atlantic Coast Line $35,000 per mile for that kind of track to operate as a common carrier.

Court: How would that compare with the cost per mile in other states?

A. Every unit cost in Florida is higher than it is in other states. The cost of construction in Florida extensively as developed by the Seaboard Air Line Railroad and as set out in their application to the Interstate Commerce Commission for their line into Miami, was $81,000 per mile.

Our own cost of construction was $35,000 a mile in Florida. In southwest Georgia the cost would be essentially the same because in southwest Georgia there are some hills so that the excavation is greater than it is in Florida in cubic yards, but I don't think any railroad spent as much as the Florida East Coast Railroad in two tracks constructed, and the Seaboard Air Line in its extension in Florida, which was made about the same time.

[fol. 2126] Mr. Adair: Don't you know that the Florida East Coast Railroad built its second track in 1925 during the height of the boom in Florida?

A. I know it wasn't.

Q. That was about this period?

A. Just before this period.

Q. Some three years before this period?

A. Yes, sir, some three years before this period.

Cross-examination.

By Mr. Adair:

I have read Mr. Saunders' Exhibit 80-A, but I have not read his testimony. I don't know what his reason was for establishing and applying those various ratios which he has there applied and effected. I only know they are in the exhibit. I did not prepare a written study on that exhibit. I prepared a written memorandum for Mr. Alston.

Q. Didn't you think it worth while to read what Mr. Saunders had to say on the subject?

A. I was not interested in Mr. Saunders' testimony. I am simply criticising the exhibit to show the error of the exhibit.

Q. But not the basis on which he arrived at it? You were not interested in how he arrived at his basis and his comparisons and results that were established in that exhibit?

A. No, sir. I am not interested in this case at all. I was simply asked by Mr. Lamb to look over this basis of apportionment as was given on this exhibit and to be pre-
[fol. 2127] pared to say wherein it was right or wrong. I take Virginia as 100% on the ratio of relative energy of the people of Virginia and of Florida. We have 300 miles of track in Virginia. In 1930 the total road mileage was 5,161

miles. I take North Carolina as 90%. That is next to Florida in mileage. I cannot say how many miles we have in North Carolina, but I will have it looked up. I don't recall the mileage in any of the states particularly, except Florida and I have looked Florida up. (Page 695-B of Tes.) I would say we have about 225 miles in Alabama. Alabama and Virginia have a short amount. I will supply those mileages and give you the correct mileage for Virginia and Alabama. This Virginia mileage of 300 miles is partly double track and partly single track. The main line is double track and there are some short branches.

Q. Now you say that one of the things that attributed to the higher cost of railroad construction and maintenance in Florida is the difference in energy in the people of Virginia and the other states, and the people of Florida. Do you take Virginia as 100% on that too?

A. Yes, sir. What I said to you was that the energy between Virginia and the Carolinas for track labor was greater than the energy in Florida, and I measured it by this method—that in Florida, Tampa, for instance, or any point in Florida where the traffic density is less than it is in Virginia, it takes the same number of men per section to maintain the section as it does in Virginia. That is, with less work to do, it takes the same men and the tracks in Florida are inferior to the tracks in Virginia.

Q. Is that true with respect to comparing North Carolina with Florida?

A. The lassitude is due to the heat you have in Florida [fol. 2128] that you don't have in North Carolina. North Carolina is nearer the Old Dominion. Excluding a little part of south Georgia, which I put in Florida, there is a greater energy in the labor in South Carolina than in Florida. Now, I am not talking about the intelligent and ruling class, but the men who fix and maintain the track. I couldn't say what the extent of the difference is. I simply say that it takes more labor to maintain a mile of track with the same territory in Florida than in Virginia with the same territory. If we put the same number of men on a section in Florida as we put in Virginia, the amount of work they are doing in Virginia, due to the temperature, is greater and the feature about it is that the tracks north of Florida are better than the tracks in Florida. I do not have any figures as to how much more it costs us in Florida than in the other states due to the energy or want of en-

ergy. I could not make an estimate. I could not say whether it is 50% or 10% or 20%, but I know that is something to be given substantial weight in obtaining the relative cost of maintenance or construction. That is part of my experience. I said that traffic density had but little effect on account 202. That is roadway maintenance and that traffic density has almost exclusive effect on account 220. The two are just crossed. One represents one thing and one represents another thing entirely, and they are put together in this Exhibit 80-A, which is in error.

Q. Mr. Willoughby, some of my statistical friends will discuss some of these details with you, but I was much impressed by the fact that your criticism of these very carefully, and I think honestly, compiled statistics, was entirely destructive, and particularly so when you didn't bother to read the testimony that Mr. Saunders had given in support of them, and I wouldn't think you have in that connection anything constructive to offer to take their place.

A. No, sir.

[fol. 2129] Q. If these are wrong, what is right? Are you prepared to say?

A. No, sir. Not today.

By Mr. Gutheim:

The reason for curves on a railroad is the change of direction. The change of direction may be due to provide a river crossing; it may be due to going to some town, or it may be to avoid some excavation, and everything that influences a change of direction, causes a curve. In the construction of a railroad, it is not possible to avoid curvatures. I am speaking of a railroad of the magnitude of the Atlantic Coast Line. After our railroad is once built and located with curvatures, from a legal point of view it is not possible to straighten it out. In one particular, if we should straighten out our railroad from Charleston to Savannah, we would cut out every community between the Stone River and the Savannah River near Savannah and it is not possible for us to do that. It is true that railroads from time to time do eliminate curves in the interest of economy. That is done by re-locating. The Richmond and Petersburg Railroad is re-located. You often do make an excavation, and the newer machines for railroad construc-

tion and with more available capital that now applies, a railroad built in 1933 would not necessarily be on the same location as a railroad built in 1883. I would also say that with the increased density of traffic, it might be more economical to straighten out a curve in one place and not in another. The cost of curves is the resistance. That is all, and if you can eliminate that curve or resistance, then your coal goes a little further, subject to this other fact, that an engine running light over the railroad burns nearly as much coal as an engine running full tonnage. It is a fact that you may straighten out a lot of curve on a railroad and thereby have less curvature in that particular location than another, and you then save a lot of money in that location, [fol. 2130] and you change the operating expenses, the entire operating expenses, of the property that was abandoned. It costs a railroad to abandon a piece of property just what it originally cost it to build (Page 700 B of Tes.), and when a railroad abandoned a piece of property it would also have the cost of the new structure of property. If you have a railroad that cost you $35,000 a mile, and build a new railroad at a cost of $75,000 a mile to avoid a curve or round the curve, the cost of the new road is $105,000, but you are only capitalizing the $75,000 and you absorb in your operating expenses the $35,000. Then after you have done that, you have gotten rid of curves in that locality with a relatively larger investment on your books. The Atlantic Coast Line Railroad between Richmond and Jacksonville, 680 miles, has about 30 miles of curve. It is the straightest railroad in the eastern United States and there are no curves to take out for which there would be any economical justification whatever. We have it more nearly perfect today than any economical change would make it, so far as the change of line is concerned. It is not true, from an engineering standpoint, that what you do is to figure out what it would cost you to take out a curve and what you would save in operation over the triangle as compared with the curve, and if you figure you can save money by the triangle you take out *of* the curve. There may be times when you take out a curve, but as far as the line between Richmond and Jacksonville is concerned, we would not spend any money to take out a curve there. We have taken out curves. The Richmond and Petersburg Railroad, built in 1834, followed the contour of the hills, and the 22 miles of that railroad was recorded to cost over $300,000.

The Atlantic Coast Line took out these curves and straightened it out because the curves were sufficient to be a burden on operating expenses.

Q. How do you explain for your own satisfaction that it was economical to remove the curves on the 22-mile section? How could you do it as an engineer?

[fol. 2131] A. You would figure the cost of the curve as greater resistance, and the amount of excess coal you handle. You would have to have the problem first and ascertain the amount of traffic before you could turn that into money and tell how it is economical to remove the curve. I didn't have anything to do with straightening out the 22 miles of curved track. I didn't know what the traffic was at that time. The problem is all dependent on the number of trains running on it. If you cannot reduce your payrolls and your fuel bills and material costs by straightening out a railroad sufficient to pay the additional cost on the new investment, plus the cost on the old investment abandoned, it is not economical. We have freezing temperature on the Atlantic Coast Line in North Carolina and Virginia. We also have freezing temperatures in the sense of freezing oranges in Florida. I have spoken of this—that in Florida we get less labor out of the track work than we did in Virginia. That is what I spoke of. That is observation—not theory. I don't know why that is. I am not going to tell you that it is due to the difference in temperature in Florida and Virginia. I say this, that the principal exponent of that theory is Dr. Huntington as to climate on humans. It is his theory. The theory upon which I have reached my conclusion is observation and result, without knowing what causes it. I am not interested in what the cause is. It is the experience with the Atlantic Coast Line track labor. The extent of it is that it requires us to employ the same labor for the maintenance of track in Florida as it does in Virginia, while the traffic in Virginia exceeds the traffic in Florida. I cannot turn that difference in labor efficiency to difference in cost expended in dollars and cents. I have spoken of the difference in maintenance of buildings, due to the fact that the hot sun bears down in Florida. Concerning this, we can only say that the capital expense of roofs in Florida is greater in proportion than in Virginia, but I do not have the amount of the figures, and we say that the hot sun in Florida burns out

the paint from the wooden buildings quicker than it does in Virginia.

[fol. 2132] Q. And in figuring the formula for determining the trackage costs in Florida as compared with Virginia, what difference in dollars and cents would you make on that account?

A. I cannot give you the difference in figures.

Q. Do you know also that mechanical energy is affected by temperature?

A. What do you mean?

Q. Locomotive energy?

A. I cannot say about the importunities of a locomotive.

Q. You take refuge in the fact that you are a civil engineer and not a mechanical engineer?

A. Yes, sir.

Q. You don't know that a locomotive in 32 degrees temperature cannot pull as much or less tons as at 72 degrees?

A. I couldn't say.

Q. Do you know anything about it?

A. I cannot say. I don't know sufficient to testify about it. I have seen a locomotive rating chart, but I don't know whether a locomotive rating chart rates locomotives from the point of tonnage they are able to handle at different temperatures. (Page 705 of Tes.) Traffic laying and surfacing in maintenance of way track depends largely on the track and placing the track, not the track laying and surfacing in the accounts as a relation to the number of tons that pass over the rail. In other words, it is greater with the greater density and lesser with the less density when you pass the minimum miles necessary to have to keep the structure at all. I said that roadway maintenance depended [fol. 2133] largely upon the area maintained. The standard of roadway maintenance is the same for the main line and the standard is the same for all branches, but we have not obtained the standard in Florida to the extent that we have obtained the standard in the northern sections. The standard of maintenance on a branch line in Florida and the main line in Florida is not the same as far as the service performed in it becomes the same. That is, we maintain our main lines in Florida so that trains may operate safely at 70 miles an hour, and we maintain our branch lines in Florida so that trains may operate safely at 40 miles an

hour. The standard of track is not the same because we put a heavier rail and heavier ballast on the main tracks, and put the light rail and light ballast on the branch line tracks. We maintain both so that each will perform what is required of it by the traffic. Ordinarily our requirements for main line traffic would be greater than for branch line sections. We have more men on the main line traffic than on the branch line traffic. There is more traffic on the main line than on the branch line. Yes, I said that I had been following the valuation of the Atlantic Coast Line for a good many years—for ten years or more. The Interstate Commerce Commission in determining cost of reproduction new less depreciation, had a uniform rule for the amount of depreciation to be charged on ties until the United States Court said it must be by inspection and therefore they inspected it in January and February of this year to determine the depreciation of it by inspection. I couldn't tell you what the rule was. The Commission had a whole series of rules. We only said to the Commission in our handling it with them, we are not in accord with your principle of valuation. We never discussed with any of the Commission each amount of depreciation. In the item of ties, in the final determination by the Commission for reproduction new, less depreciation, I couldn't tell you what was the depreciation that the Interstate Commerce Commission charged. I will say this, that we did not make any point [fol. 2134] about the cost of reproduction new of ties, rails or other track materials, because under the Commission's own account, this corrects itself. We knew that we could re-lay that rail before the hearing was concluded. That was really involved in the Commission's accounting and we knew under the Commission's accounting, they would take care of themselves, those four accounts being established. The general rule made no difference to us. We talked to the engineer and undertook to get him to allow us all we could, but we made no point, but said whatever you charge up for that, we will carry it. It was not a rule of the Commission that they got a 50% flat on the Atlantic Coast Line. The Atlantic Coast Line Railroad had begun in 1912 placing in their track a great number of creosoted ties and there was no application of the 50% rule. That was not the only exception to the 50% rule. It didn't have any reduction of 50% flat on other items. I couldn't say whether there was any exception by the Commission to

the 50% rule of depreciation on ties on the Atlantic Coast Line Railroad, except as to those new creosoted ties about which I have just testified. We didn't discuss depreciation with the Commission. The Commission put down a sum as depreciation. We were out of accord with the Commission and in accord with the United States Supreme Court as to how depreciation should be determined and it was a matter of indifference to us what the Commission said or set up. We made the issue with the Commission on the whole theory of depreciation and it was a matter of indifference to us how they recorded depreciation. When we were in this hearing that ran over a period of about a year on our protest against the tentative valuation, I didn't discuss the question of ties. I heard it discussed by Mr. Stephenson. I told him to talk to the tie man and get him to allow us as many dollars as he could, because we were not disturbed as to ties in view of the Commission's own classification taking care of that, even at the time we were discussing it. The view I suggested to my subordinate was as to ties and not on the rest of the railroad. Yes, we wanted to get the best value on all accounts.

[fol. 2135] Q. I want to know if what you had on ties was what the Commission allowed you on ties.

A. No.

Q. You went into the tentative valuation as the man in charge of engineering or valuation on the Atlantic Coast Line Railroad and you didn't know what the Interstate Commerce Commission allowed you on ties?

A. You mistake my position. The attorneys presented the case before the Commission. It was a law suit and the attorneys conducted it, and they conducted all questions of valuation and they were relying on the law and not on the subordinate officer of the bureau. The bureau takes this position, that any agreement made by its subordinate officers in a hearing on valuation is not binding on the bureau. The Commission set out in their tentative valuation a sum of ties in dollars and then sat alongside of it a column of ties less depreciation. The column that showed ties less depreciation was of no interest to us. I don't know what that was. It is in the record. The attorneys made an attack on the depreciation that the Commission laid down as to ties. They took the position that the Commission's whole theory was wrong as to depreciation. The curves and methods by which they took that position, the work-

ings of the attorneys' minds, I couldn't tell you. I told our attorneys there was no current depreciation. I couldn't say what the Commission put down for ties as shown in the files there. I have not that information here.

Q. Now you spoke of the fact that the amount of ballast used in Florida is generally less, but the cost is greater? (Page 710 B of Tes.)

A. Cost per unit.

[fol. 2136] I can't tell you how the final cost of the ballast applied in the track compared in Florida alongside the rest of the system. The ballast is one of those accounts which the Commission's own classification takes care of itself in the passage of years, and those years have passed now and so we know it is in what the Commission set up as ballast. Ballast is the material itself, unloaded in the track and applied as track-laying surfacing. Clearing of the roadbed, ditching and other things go into account styled "grading." That is getting ready for the ties and the track. The grading in Florida costs more per cubic yard than on the rest of the system, but no more per mile of railroad, because the grading in Florida is generally lighter than the grading elsewhere. You could pick a mile in south Georgia that would cost more or less than in Florida, but the actual cost of grading in Florida is more than the unit cost of grading elsewhere. The Commission did this in its Bureau of Valuation, beginning at the City of Savannah and going southward until they paid us two ways; they paid us in their estimate for excavating in cuts and also for putting the yards in the fill, and north of Savannah they paid us for excavating in the cut or borrow pit only. The unit cost of grading in Florida is greater for the same grades in constructing roadbed. I mean that in Florida the Commission paid us two ways for every yard of dirt we excavated in a cut. That is, they estimated the cost of construction in the cut as one unit, we carrying that material and putting it in the fill and then excavating another unit, so that in the lines north of Savannah, the Commission paid us for excavating in the cut only and nothing for putting in the fill except an overhaul price where there was an overhaul. The unit price of grading per unit for railroad building is more in Florida than in the South Atlantic plain and the Peninsula plain. There were places in Florida where the cost of grading per unit was less than elsewhere in the

system. I couldn't say to what extent that was true. The unit prices submitted by a contractor were usually 100% of the low price to the high price.

[fol. 2137] Q. I take it from what you have said that you have some familiarity, though perhaps not with the account called "ties", with the report of the Interstate Commerce Commission styled "Atlantic Coast Line Railroad ARCO Valuation Report 503" and being the so-called 19-A valuation of your company's property?

A. I have a copy of it.

Q. Now can you refer to the appendix of that report, insofar as it shows track mileage in Florida and track mileage in the other states in which your railroad operates, and refer also to the portions of the report that show the figures allowed by the Commission for grading in Florida and for grading on other sections of the railroad in other states, and tell us just what the Florida per mile average is as compared with the average per mile in the other states?

A. I could do it if I had the proportion.

Q. I wish to test you, and will let you borrow Mr. Saunders' slide rule and figure it out.

A. Now if you will tell me what you want?

Q. I want you to take 1,000 miles of track.

A. Of main track?

Q. Whatever track you are talking about; it is all track, I thought.

A. I didn't say all track. I said Mr. Saunders did not use the correct road mile. If you will tell me what mile of track you want to use?

Q. The only grading you have as prepared by the Commission is for all of the mileage in the State of Florida and [fol. 2138] I take it, therefore, that the only deduction you can make would be for all of the mileage, and therefore you will have to take all of the mileage and all the grading in each state.

A. Do you want all of the mileage of each state, or all of the mileage of the road?

Q. Take your Florida mileage and Virginia mileage and make that comparison.

A. In Virginia the road owned and used by the Virginia Railway and Power Company?

Q. Take your own.

A. Virginia 131 miles wholly owned and used.

Q. Now take Florida.

A. Wholly owned and used, 1,571 miles.

Q. Now take your allowance that your Commission gave you for your grading of these states.

A. In Florida wholly owned and used?

Q. Wholly owned and now used.

A. The grading cost for reproduction new was $6,221,219.00. It it nearly $4,000.00 per mile. In Virginia the cost of reproduction new is $1,334,928.00. That is about $10,000.00 per mile. In Georgia the cost of grading reproduction new would be $3,958,537.00, track mileage 678 miles, and that is nearly $6,000.00 per mile.

Q. That would mean per mile that you graded in Virginia would be 2½ times Florida and in Georgia 1½?

A. That is the comparative roadbed. (Page 715 of Tes.) [fol. 2139] Virginia at the time was not all double track. No, the line to Petersburg is all double track but not to Norfolk, but these costs are per mile and not costs per unit. Referring to this same report of the Atlantic Coast Line, the cost of reproduction new as determined by the Interstate Commerce Commission for Virginia is $8,636,391.00. That is about $64,000 per mile and that would cover your main line from Richmond south and also the branch to Norfolk and the two bridges over the James River and every facility. It would include the shops at Richmond and all warehouses at Richmond. For Florida the grand total by the Commission is $335,569,353.00, road mileage 1,571 miles. That is a little over $21,000.00 per mile. That includes the bridge over the St. Johns River, etc. That would mean, taking the total reproduction new in Virginia per mile, it is a little less than 3 times what it is in Florida. The cost of reproduction new in North Carolina is $30,000.00 per mile of road; South Carolina about $26,000.00 per mile and Alabama $23,000.00 per mile. That is, the items included in the engineering report. Items for grading per mile of road in North Carolina about $5,300.00; South Carolina about $5,400.00; Georgia about $5,800.00 and Alabama about $5,000.00.

Q. Now, when you say from the items included in the engineering report, that is true as to all of the states and as to each of the states, is it not?

A. Yes, sir. All of the figures with reference to cost of road that you have asked me have been in reference to the engineering report.

By Mr. Adair:

I never was in the lumber business, nor was I ever connected with a lumber manufacturing business.

[fol. 2140] Q. Do you know that in building a tram road that the lumber companies are laying and relaying the ties and tracks and moving them about from place to place as they operate in the timber?

A. I know that log companies from their log branches to their main stem do take up and move them as they cut the timber. The main stem, I think, usually stays where it is. We leased to a lumber company in North Carolina rail in 1888 that was returned to us in 1933. That rail was used in a main track. If you make a new junction, you make a new railroad. They would use the same ties that were safe to use. A tie that has two years service life in it will usually be removed. Our road has leased in times past, quantities of rail for the use of removing timber to the saw mill on the Atlantic Coast Line Railroad for use in tram roads for the lumber company. The ordinary going price of that would run around $40.00 a ton.

Q. I mean the per annual lease price.

A. It is based on about $40.00 a ton for 56 pound rail.

Q. Not based on it, but what was the calculation?

A. I think it was 6% interest and taxes and it worked up to something like about 10%; about $400.00 a mile.

Q. About 10% of the sale price of the rail?

A. Yes, sir. Now, mind you, these figures with reference to rail rental I have nothing to do with and it is purely from recollection.

By the Court:

The ties have varied life. They differ so much. An ordinary tie in Florida lasts a little less than six years. We put 2900 ties per mile in our tracks and they cost about 85¢ apiece. The life of a tie in Florida is about 6.6 years; [fol. 2141] in Alabama 6.95 years; in Georgia 8.48 years; in South Carolina 8.35 years; in North Carolina 8.13 years and in Virginia 9 years. I do not know how many ties it is customary to lay in tram roads per mile. The life of a

tie depends a good deal upon the proportion of treated ties there are in the roadbed in that particular state and the number of untreated ties in the roadbed. The figures I gave you are principally untreated ties, because at the time this study was made, we only had a few treated ties. Half the ties in the track now are treated ties. I suppose we have a little larger proportion of treated ties in Florida than in other states. The treated tie will pass out from decay and I think the ratio I give you of 74 to Florida to 100 for Virginia will apply to treated ties as well as untreated ties. I disagree with Mr. Saunders on the number of miles of road, both in our line and in Florida. His calculations in both instances were more than mine.

Q. Did you include the 2 main tracks in making your calculations, or did you count a mile of double track as only 1 mile?

A. A mile of road means a mile with as many tracks as there are, and the miles calculated are based on the miles of road because the road maintenance is based on miles of road and not miles of track.

Q. You did not observe from his exhibit that he was measuring the main line tracks, including mile of track as distinguished from mile of road?

A. It is not so said on the exhibit.

Q. You didn't read his testimony and observe it was said in the testimony? (Page 720 B of Tes.)

A. I did not.

[fol. 2142] By Mr. Gutheim:

Q. It has been testified here that Florida was at the peak of the boom about 1925 or 1926. Do you know what the trend of the number of men on the payroll of the Atlantic Coast Line Railroad has been since that time?

A. I do not as far as the Atlantic Coast Line is concerned in 1926 at the peak of the boom. In 1926 we had fewer employees than we had in 1928, 1929 and 1930, because at the authorized rate we couldn't get them.

Q. Take it during these last three years of depression, has the number of men on the payroll of the company's line declined as on other railroads?

A. We have made a reduction in our number of men employed beginning January 1st, 1931. We made an increase in 1932 with the expectation that there would be some

additional earnings, but in June, 1932, and in September, 1932, we made a further reduction of our men. We are now working less men than we have worked since I have been with the Atlantic Coast Line in track maintenance.

Redirect examination.

By Mr. Alston:

I testified that the cost of reproduction new per mile of road had nothing to do with the maintenance, and also that the cost per unit for grading in Florida as compared with the cost per unit of grading in other states is substantially higher. Nothing I have said has any effect on those statements. They are true. The cost of maintenance of the track in Florida was more per unit of traffic carried than the maintenance of the traffic elsewhere. The cost of maintenance is based first on the minimum amount necessary to maintain the railroad, and then as traffic increases, the cost of maintenance does not increase in the same proportion that the traffic increases after you get by the irreducible minimum of maintaining the traffic. By saying the cost [fol. 2143] per unit is greater, I mean the unit of traffic carried. After you have gotten the road maintained to its minimum, then as you increase the traffic the cost of maintenance does not increase proportionately. We might have a section with one train per day on it and it would be 10 miles long and we would be maintaining that with a foreman and three men. Now that traffic might double and have two trains per day, but we would only increase the labor one man, ⅓ instead of ⅔. The added ton that is put on a railroad is profit. It is like the added guest that comes to a hotel and occupies a room which otherwise would be empty. The cost of maintaining a track is first the irreducible minimum and then every added ton you put on there, of course tends to make you some profit. If you have traffic enough to pay for the cost of maintaining the property and you add one train on it, that train will not cause added maintenance cost to the same degree. I am speaking about maintenance costs only. There are more treated ties in Florida than elsewhere because the life of the untreated tie in Florida is shorter than elsewhere. In other words, the circumstances which make for decay are greater in Florida than elsewhere. The things that make for decay thrive in a moist climate. The number of tracks upon a

road has nothing to do with the maintenance of the roadbed. The cost of maintaining a roadbed is dependent on the exposed elements of the weather. Excluding some little parts of the South Atlantic Coast, the wear of the rail is directly proportionate to traffic. Where you have two tracks, the wear of the rail on the two tracks per ton traffic carried on the two tracks will be no greater than the year on the rail on the other track, the one track, if all the tonnage were carried on that track. Nothing that I have said on my cross-examination has altered my opinion as to the correctness or incorrectness of Mr. Saunders Exhibit 80-A. Mr. Saunders' Exhiibt 80-A was not worked out on a correct theory.

[fol. 2144] Q. You have said that in the valuation proceeding before the Interstate Commerce Commission that depreciation was a matter of indifference to the Atlantic Coast Line. Will you be kind enough to explain that?

A. It was a matter of indifference to the Atlantic Coast Line because our attorneys representing us there felt the rule of the United States Supreme Court relative to this would control rather than the rule of the Commission if the matter ever came before a Federal Court. I have stated that the valuations used by Mr. Saunders were those of 1917. I have stated in full the amount of the improvements in the road applicable to the Atlantic Coast Line in Florida since that time in two of the accounts named in the testimony. These accounts were fuel stations, 233, and shops and engine houses, 235. Those are the two which I worked up. Mr. Saunders' accounts of calculation for 1917 are not based upon the values as they existed for the Atlantic Coast Line Railroad Company's properties in Florida in 1929, 1930 and 1931. Mr. Saunders used the I. C. C. valuation for 1917, which we always maintained was incorrect, and has not added thereto the additions and betterments made since. Mr. Saunders' statement as to value is based upon the Commission's values as of 1917 without giving any benefit to the Atlantic Coast Line's contentions that the value was too low, and it also failed to give consideration to the betterments and improvements that had been put on that property since the date of valuation. Furthermore, the Commission made a demand on us in 1932 to supply information as to what added elements of value there were under what they called Section 17 of Supplement 5 to their Valuation Order, being items there under

the classification that would not be charged to capital account, but which would appear in a cost of reproduction new. We worked that up and it amounted to $54,000,000—about $10,000 per mile. No consideration was given to that by Mr. Saunders. (Page 725 B of Tes.) The cost of reproduction new if brought up to date for this restitution period, would have been materially higher than the cost of reproduction new based on the 1914 price level which [fol. 2145] was used in the 1917 valuation, and the ratio is of the order of two; that is, the valuation brought up to date as to the restitution period would have been double what the Atlantic Coast Line claimed its value was in 1917, and more than double what the Commission allowed us for 1917.

Recross-examination.

By Mr. Adair:

I assumed that the proportion of this computation and calculation in the Exhibit of Mr. Saunders was merely, if not wholly, for the purpose of establishing ratios from which the system operating expenses could be applied to Florida and the rest of the line, and because I assumed that I pointed out where it erred in order to accomplish that purpose.

Q. Don't you know that he was not calculating a value upon the amount and if the ratio had been the same, it would have made no difference?

A. If his principles were correct, his ratio wouldn't have amounted to anything.

Q. Did you read his testimony to see what his principles were?

A. No, because it is given in the statement. He has ⅔ for the relation of roadway maintenance as given to the average miles of operation, and I say to you that the average mile of operation has nothing to do with maintenance of railroad.

Q. When you establish ratio, ⅓ bears the same relation to 10 that 15 bears to 5, doesn't it?

A. No, sir, it does not. You are establishing valuation on an erroneous basis. He has taken a basis of railway maintenance and established a ratio and the two are directly opposite or opposed to each other. It is like one

[fol. 2146] man going up the elevator and another man going down. It would have been a material change if he had put the $54,000,000 on, because the 54,000,000 represents betterments that have been absorbed in the maintenance expense. The Commission has not allowed the $54,000,000. They have not had the opportunity, because the valuation has not been brought up to date. The only public authority passing on the value of our road has been the Interstate Commerce Commission and that was in 1917, and that value was employed by Mr. Saunders.

Redirect examination.

By Mr. Alston:

It is not possible to apply any ratio on the basis of Mr. Saunders' Exhibit 80 A, on the theory that $54,000,000 which I have referred to could be distributed on any basis shown in that Exhibit. That $54,000,000 was made up from a variety of items covered by the I. C. C. primary accounts. That is, in bridges, culverts, roadway maintenance, etc. It is still just a claim because nobody has attempted to make any use of it. The two accounts by which I illustrated the increase since the valuation date, were increased more in Florida than on the system and the percentage relation is higher than Mr. Saunders showed.

Recross-examination.

By Mr. Adair:

The additions and betterments were added to conform with what the Commission called 588; that is, value of improvements less developments. If Mr. Saunders had used the additions and betterments to property in Florida, the relations he worked out would have been materially altered. The Commission's order is that we must return those costs. Our own theory is contrary to that. Our own theory is [fol. 2147] that it must be valued as of the date of the inquiry, not only the original 1917, but all the additions and betterments again. If that should be done, the value of the property as of the date of this inquiry would have been more than $400,000,000. That is based on the additions and betterments as made. It is based upon the application of the present date of inquiry unit prices to the inventory of the Commission.

Q. You mean that you reduced the additions and betterments that have been made since 1917 to 1930 and 1931 price levels and it would be greater than the tentative valuation plus your additions and betterments?

A. No, I don't say that, because there was a period in 1920 and a period in 1926 when the unit prices were higher than the unit prices in 1930. The values of land, which are not involved in this case, in Florida were very much less in 1930 than in 1926, but the unit cost of grading in 1930 was slightly less than it was in 1926. The price of rail was exactly the same. We made no reduction in the labor costs until 1932, and we made an increase in labor costs in 1923. We made a reduction in labor cost in 1920 and an increase in 1923 and have increased it two or three times since up until 1932, so the labor cost then being covered by this contract agreement is not subject to the fluctuation of labor cost in 1930; we had that in 1921. We have made a reduction of 10% in labor cost in 1932, but we were discussing 1930.

Mr. Alston: I desire the record here to show that Mr. Saunders testified on page 308 of the Jacksonville Hearing "Exhibit 80 A is largely self-explanatory in that it sets out the exact method of weighing which was used in producing the figures in column 8 in Exhibit 79 A."

(Witness excused.)

[fol. 2148] E. M. Dewey, sworn by defendants, testified as follows:

Direct examination.

By Mr. Alston:

I am connected with the Atlantic Coast Line Railroad Company in the capacity of Superintendent of Car Service. I have been connected with the Atlantic Coast Line Railroad for 26½ years and have been with the Car Service Department for the same length of time. (Page 730 B of the Tes.) I am familiar with Exhibit 63 A which was offered in this case by the defendants. The letter shown in Exhibit 63 A, was dated January 18th, 1926. It is from Mr. S. A. Stockard, General Superintendent of Transportation of the Atlantic Coast Line Railroad.

Mr. Adair: It is not your letter?

A. No, sir.

Q. Then how do you propose to explain a letter from another man?

Mr. Alston: We are going to show you.

Mr. Adair: I would like for him to show me beforehand how he qualifies himself to explain a letter written by another man.

A. I reported directly to the General Superintendent of Transportation at that time the schedule of reciprocal rental rates and regulations to be applied to outside parties. This schedule that was also attached to the letter was drawn up by me. I was with Mr. Stockard at the time the letter was written. When I spoke of reciprocal rental rates, I meant that this schedule of rental rates was reciprocal between the roads mentioned in the agreement, because it was a schedule applied to all of the lines mentioned alike, figuring the rates for the rental of this special equipment transportation charges rented in case of emergency.

[fol. 2149] Court: Who is that letter addressed to?

A. To a number of people up there; people representing those other railroads.

Mr. Alston: Your Honor, it is addressed to practically all of the railroads in the southeast.

(Witness continuing:) If the Atlantic Coast Line Railroad had an injury to its track, or a wreck or something of that sort that required it to divert or detour its train, this particular contact would not apply. This contract would apply to these cases where railroads require the rental of special equipment such as a wrecking outfit and it was necessary, or it may not have been necessary, to move that equipment from its assigned location to the junction point or point at which the service of the outfit was to be put in use. It made no provision for a train of the Atlantic Coast Line moving over the track of another road. It made provision only for the movement of the train over the Atlantic Coast Line Railroad. That was for emergency service only. Other railroads made like provisions for movement of trains over their lines. This schedule provides that for the movement of wrecking trains or trains of other special equipment requiring train service and trackage service of $1.50 per train mile with minimum charge of $10.00, and in addi-

tion rent of locomotive and cost of wages and supplies plus 10% wages, and plus 15% for supplies, fuel to be included at actual cost plus freight charges to point issued plus handling cost. That was a reciprocal charge. It was a charge that we made against this other railroad and the same charge that the other railroads made against us. The caption of this contract is "Reciprocal Rental Rates and Instructions to be Applied Covering Equipment Rented as Between Railroads Effective January 1st, 1926." It has been continuously in effect since then. When the Atlantic Coast Line permits a train of the Seaboard Air Line, for instance, to be diverted over its line, the same schedule of rates applies as where the Seaboard Air Line for instance, furnishes its own power. That is, that train moves with Seaboard Air Line power. The rate that we charge is $1.50 per train mile, plus the cost of the fuel that we furnish to pilot the train over our railroad.

[fol. 2150] I mean regardless of length or size of the train. If that worked badly for one railroad, it would have worked equally as badly against another road, or equally favorable for that road when it needed the same service. That was the basis on which this schedule was provided. It was a reciprocal agreement and the cost of service feature didn't enter into it. If there was any profit in it over the line on which the train would be maintained at the time that train would be maintained over another railroad, that profit would accrue against them to the other railroad. That was only in case of emergency which would prevent the use of their track. I have given consideration to Claimants' Exhibit 72 A, which is called "Statement showing Estimate of Total Cost to Atlantic Coast Line Railroad for Movement of Log Trains—Hines to Palatka, Florida, November 1930." The freight rental cost which I understand in this Exhibit is supposed to show or be made upon the basis of 6 mills per car mile, is unreasonably low. I say that because that rate, with the average miles that a car makes per day, would not compensate any owner to furnish equipment (Page 735 B of Tes.) for another road's use, or for another's use as it might not be a railroad.

Q. Now the provision of the contract between the Brooks-Scanlon Corporation and the Atlantic Coast Line Railroad was an agreement to pay, that the Brooks-Scanlon Corpo-

ration would furnish certain cars at that rate, as I understand it. Can you explain that?

A. Yes, sir. That contract, as I recall it, was effective July 1st, 1924. This rate of 6 mills per car mile was paid because of it being the tariff rate. By tariff I refer to the private ownership tariff or schedule of rates that railroads pay to private car owners other than railroad, for the use [fol. 2151] of their equipment. The Union Tank Line is one corporation owning and renting cars to other people.

Q. Suppose you wanted to rent cars, that the Atlantic Coast Line Railroad wanted to rent cars from the Union Tank Line? I mean cars of this character-flat cars?

A. My answer would not apply to the flat cars, because the Union Tank Line owns no flat cars. The only private owner of flat cars, other than lumber companies, that I know of, is the General Electric Company, which has a few flats for handling their special dynamos.

Q. Just answer the question as though you were dealing with a corporation that did have some flat cars.

A. As I understand the question, we would pay 6 mills a mile to this car owner for the mileage made by the flat cars on our railroad. The Railway Equipment Register is a file tariff of all car owners, including railroads, for the registration of equipment, and then Boyd's Tank Tariff, a summary of that publication, effective as shown by them April 20th, 1932, showed that there were only 1,024 flat cars out of a total of 282,000 that were privately owned cars. If we were going to get a supply of flat cars, we would soon find that we couldn't get them from a privately owned stock. There is another charge fixed in this Exhibit, Claimants' Exhibit 63 A, for the rental of cars between railroads. This schedule shows a rental of cars for the individual classes of equipment. The railroads have a reciprocal rate of $1.00 a day which is known as a per diem rate. It is collected for the use of the car. The rate that railroads charge each other for the use of railroad cars, including flat cars, is $1.00 per day. I don't think that is provided for in Exhibit 63 A.

[fol. 2152] Court: I think that is in the record three or four times, that the usual charge was $1.00 a day. It was testified to on a previous hearing.

A. This agreement provides for other freight equipment $1.50 per day. That is the reciprocal rate. I will explain

that by stating that with the wrecking outfit there are usually two cars which are nothing more than flat cars and under this agreement we charge $1.50 per day for the use of those cars. Flat cars are worth that $1.50 per day for their use. The Interstate Commerce Commission in the Car Hire case, Docket 17801, said that the $1.00 per day was a reasonable rental and ordered that common carrier railroads more than 100 miles in length pay to all common carrier railroads less than 100 miles in length that rate of $1.00 per day. Prior to the effective date of that order, January 30, 1931, the railroad paid to short line common carriers that were not subscribers to the Car Service and per diem agreement between railroads, the tariff rate of 6 mills per mile. If the short line railroad was a subscriber to the per diem agreement, they paid the $1.00 per day. The Interstate Commerce Commission said in their order that it mattered not whether a railroad was a subscriber or non-subscriber to the agreement, that the $1.00 a day rate was reasonable and should be applied between all roads, all common carrier railroads. The 6 mills per car mile is considerably less than the rate of $1.00 per flat car. The first tariff that I can find reference to carrying the rates for the use of privately owned cars, was Atlantic Coast Line Railroad Tariff, allowances to other owners for allowance on private cars, was I. C. C. 5300, effective January 8, 1906. That tariff carried the rate for refrigerator cars of ¾ of a cent a mile, for tank cars ¾ of a cent a mile, and all other classes and types of freight cars ⅗ of a cent a mile. From that day, through the insistence of owners of these special classes of cars, the rates have been increased on all classes of cars, with the exception of flat cars and [fol. 2153] box cars and certain types of gondola cars of private ownership. Washburn Tariff carried a joint, local and proportionate freight tariff showing track rental charges plus a rental on freight cars of private ownership. Tariff No. 4, I. C. C. No. 83, effective October 24th, 1911, carried the rate for live poultry cars of ¾ of a cent per mile and refrigerator cars of ¾ of a cent per mile, tank cars ¾ of a cent per mile, and all other classes and types of freight cars ⅗ of a cent per mile. I call attention to the fact that the flat cars and box cars are included under the classification of all other classes and types of freight cars. These rates on that special class of equipment other than freight cars and box cars and other classes not par-

ticularly stipulated, have been constantly increased to the present time. The American Railway mileage tariff 7 H, mileage allowances and rules governing the handling and payment of mileage and equality of mileage on cars of private ownership, carries a rate for refrigerator cars of 2 cents a mile, for tank cars 1½ cents per mile, and all other freight cars other than those specified, 6 mills per mile and that would apply to flat cars, box cars and these special type of gondolas. That applies to cars only of private ownership. I am mentioning that as showing the fluctuation in the rates of the other special classes of equipment as compared with flat cars to show in my opinion why the rate of 6 mills per mile has not been increased on flat cars. I have testified that there was a very small proportion of privately owned flat cars in existence. The rates on these other special classes of cars have been increased upon the insistence of the car owners to a rate that would compensate them for car ownership. There has been no such request made for an increase in rates for flat cars, because the number of such owners of cars is negligible. I don't know that such cars have gone out of private ownership because of that low rate, but I do know that they are not in existence. I would not expect people to build flat cars and rent them at 6 mills. I have already testified as to this substantial difference in price in the [fol. 2154] particular application of 6 mills per car mile and $1.00 per day. $1.50 is substantially more.

Q. It is that $1.00 a day which controls between railroads under the file tariff as I understand it?

A. It is not a file tariff. It is an agreement between railroads known as the Car Service and per diem agreement that names the rate for the use of interchangeable equipment. In Docket 17801, the Commission set that rate up as applicable to short line railroads as a reasonable rate. If you had applied the $1.00 per day rate to these 125 cars, the total car ren[illegible] under Item 5 of this Exhibit 72 A, would have been $3,750.00. If these 125 cars had been charged for at the $1.00 rate, the total cost would be increased from $8,873.56 to $11,930.37, and that would have increased the charge per car from $17.82 to $23.90. In Exhibit 73 A, Item 5, the car rental cost of shown as 42 cars, 25 days, at $1.00—total, $1,050.00. According to the number of cars that were taken out of that service and put in the lumber company

service, that charge or cost according to my calculations, should be increased to $3,750.00, because this is the total of 125 cars assigned at $1.00 a day for the calendar month. In Exhibit 73 A, Item 5, is rental of cars, 42 cars, 25 days at $1.00—$1,050.00. The $1.00 per day rate is shown, but it is only shown for 42 cars for 25 days. I assume it shows 42 cars because that is the average consist of the train. The contract between the Brooks-Scanlon Corporation and the Atlantic Coast Line Railroad provided for a rental of cars to the Atlantic Coast Line on the 6 mills basis. The contract with the Brooks-Scanlon Corporation stipulated that they were to pay the tariff rates. That was just one of the items in a contract involving a good many other things. Exhibit 78 A, is a statement showing "Estimate of Total Cost to Atlantic Coast Line Railroad for Movement of Log Trains, Homosassa to Lacoochee, Florida, May, [fol. 2155] 1929", and he shows the car rental as 52,467 loaded and empty car miles at 6 mills per mile, per car mile, $314.80. My criticism as to showing the car rental cost in this exhibit is in principle the same as for the Wilson Cypress Company. Now as to the Cummer Cypress Company, for whom this service was performed, we had 75 of our flat cars assigned and for a 31 day month, it would make $2,325.00 for car rental cost to be shown instead of $314.80. That would bring up the total cost, which is shown on Exhibit 78 A as $4,871.99, to $6,682.49. This item provides for locomotive rental on the basis of 1 mill per pound of tractive effort. According to the record, locomotives 802, 803 and 819 were assigned to the trains on the Homosassa to Lacoochee movement in May 1929 and these locomotives have a general average of 43,600 pounds and the rental rate would be $43.69 per calendar day. The rental for 31 days in May 1929 would be 31 times $43.69 or $1,354.39. That item appears in Exhibit 78 A, Item 3, as $1,044.70. With the entire corrections that I have made on Exhibit 78 A, the total cost as shown in Items 1, 2, 3, 4, 5 and 6 would be increased from $4,871.99 to $7,191.88, which is an increase of $2,319.89. The way I figured it, that increases the estimated cost per car from $12.30 each to $18.18. The Atlantic Coast Line Railroad has made contracts for the rental of cars on the basis of $1.00 per day for flat cars. I cannot recall with whom. We have a number of instances and I recall one—the U. S. Sugar Company at

Clewiston, Florida. We rented them 75 cars. That is the universal charge of the Atlantic Coast Line for the rental of its cars to other roads or to other persons. (Page 745 B of Tes.) Based on the average mileage of a car per day, I figured out for the month of March 1933, how 6 mills per car mile compares with $1.00 per day in actual use. I took the total number of cars and deducted from that total the bad order cars, the surplus cars and divided it by the number of days, or divided it into the total freight car mileage, and that figure was divided by the number of days in the month and it produces a figure for the average mile [fol. 2156] per car per day of 70.4 miles, which at the rate of 6 mills, would be 42.2¢, which is 57.8¢ less than the $1.00 rate.

Cross-examination.

By Mr. Adair:

This tariff (referring to the tariff) is the private ownership tariff which was in effect during the period February 8th, 1929, to March, 1931. This tariff provides for coal or coke cars 1½¢ per mile. This is a car open on top, with solid bottom, side and end, suitable for mine trade, but not having sufficiept strength or cubic capacity to carry its marked capacity of bituminous coal. I understand that is the definition of that kind of gondola as shown in Note A. That would govern the other classifications which would be 6 mills a day. We use such cars to a certain extent in the transportation of logs. You understand that this tariff relates to the cars of private ownership. They are held in private ownership for many purposes. I wouldn't think that a man would buy a car and rent it to third parties or to railroads except for the purpose of making money from them, but I wouldn't think that a man or individual or company would buy cars and rent them at 6 mills per mile. That is the tariff. It is the schedule of rates that the railroad paid. The tariff we generally refer to and schedule of rates that the railroad collects. That is the basis of what the railroad paid to third parties for their equipment during the restitution period and I have explained why I thought that rate had been increased in proportion to the other classes of equipment as named in that tariff. Coal or coke cars are cars which are constructed for the transportation

of coal or coke. At the present time, the capacity of such a car runs from 80,000 pounds up to 140,000 pounds. I know there are some of these cars in private ownership, but I also know that the Atlantic Coast Line handles none. I don't know how many of these cars there are in private ownership. [fol. 2157] The Atlantic Coast Line Railroad owns its own coal and coke cars and gets $1.00 for them. I understand that the Atlantic Coast Line owns them for the protection of its fuel requirements primarily. These coal and coke cars are cars that have hoppers in them, since gondolas without hoppers are excluded from the main classification and I understand further that they are cars that can carry their cubic capicity in bituminous coal. I don't know what sort of car would be more expensive to build or to buy than one of these flat cars that were in this Wilson Cypress Company and Cummer Cypress Company service. I think that the car I described at 1½¢ per mile would cost substantially more than a flat car, than such cars in the service of the Cummer Cypress Company or the Wilson Cypress Company. I don't understand that at this 1½¢ per mile there are a substantial number of these coal or coke cars such as I have described, owned by investors and leased on that basis. I understand some of them are owned by the coal mines—the Berwin Coal Mine and others—and I think they are used in the transportation of their own products. They are the only ones I know of. (Page 750B of Tes.) Examining the 1924 tariff 7D and tariff 7G, I find that the rate for refrigerator cars in 7D in effect in 1924 was the same as 7G. The only difference there in the instant class of equipment is in the definition of the different classes.

Q. I will be very much obliged if you will leave me that tariff or copies of it, as I would like to have a photostat made and put in the record. There has been so much testimony about it that I think it should be in the evidence or at least, the title page and that sheet. Likewise, I would like to have for the record the one now currently in effect, which I understand is 7H, which was issued I believe, August 10th, 1931, effective September 15th, 1931. Then, too, I should like to have in evidence the title page and this page showing the railroads subscribing to it and the page showing the equipment. May I borrow it from you long enough to make a photostat copy of it?

[fol. 2158] A. Yes, sir; here it is."

I do not know what the cost of one of these 1½¢ cars for coal was during this restitution period and I do not know what it is now. I do not know what the approximate cost of the flat car such as we employed in the Cummer Cypress Company and Wilson Cypress Company business was in the restitution period, nor do I know what it is now. On my direct examination I said that these emergency trains belonging to the Seaboard Air Line operating over the tracks of the Atlantic Coast Line would not be covered by this Exhibit 63 A, which is the so-called reciprocal rental rate agreement. The charge applied would be $1.50 per train mile for such operation where they furnish the power, and $3.00 per train mile where we furnished it. That is also reciprocal among the railroads in the Southern group. I spoke of our rental rates for locomotives as being 1¢ per mile per pound of tractive effort. That is our reciprocal rate. It is prescribed in that schedule. That is also the going rate when we rent locomotives to third parties. That is practically the universal going rate for locomotives in the Southeastern territory. I am not in a position to say from my own knowledge what the rates for other parties were when they rented equipment to parties other than the railroads named in their contract, but as far as the Atlantic Coast Line Railroad is concerned, it is true that that is the rate. Exhibit 72 A relates to the Hines to Palatka movement. Upon request of the Claimants, I computed that there were 125 cars assigned to the Wilson Cypress Company. Those cars were in that service all the time, but they were not running on our railroad all of the time. They were in the service between Hines and Palatka, or in the place of production of logs in Palatka. I mean they were taken out of the Atlantic Coast Line service and assigned to that service and not used in any other service except this log train service. All of our cars are not in actual service every day in the year. I couldn't say what proportion or what percentage of freight cars are employed in actual service during the year, or how many days out of the year. [fol. 2159] The last figures I saw of the surplus cars were between 9,000 and 10,000 out of a total ownership of 30,000 cars. That would be about 30% surplus cars. That is at the present time. During the restitution period it was considerably less. There is always some surplus except where there is a shortage, but we have not had that situation for a good while. I couldn't say whether there was as much

as 15% surplus during the restitution period. (Page 755 B of Tes.) I could find out if you gave me the exact date.

Q. February 8th, 1929, February 8th, 1930, and a like date, February 8th, 1931. Give the car ownership held in surplus.

A. I increased this item of $723.19 for car rentals to $3,750.00 upon the assumption that all of these 125 cars were in use every day by the Wilson Cypress Company and I increased the estimated cost per car to $23.98. The statement in Exhibit 72-A shows that the revenue per car under the Cummer scale that month was $20.35 and the revenue actually received from the I. C. C. per car scale was $41.13.

Q Now you say with respect to Exhibit 73-A, which was another statement showing estimated charges for entire movement, Hines to Palatka, in November 1930, that you likewise increased Item 5 there from $1,050.00 to $3,750.00. You then assumed, did you not, there were 125 cars in the service of the Wilson Cypress Company every calendar day, including Sundays of each month?

A. I did not assume it because the whole record shows there were 125 cars assigned to that service and we took them out of other service and allowed the Wilson Cypress Company to equip them with these special stakes, and they were assigned to that service. It is true that they were equipped by the Wilson Cypress Company at the expense of the Wilson Cypress Company. I couldn't testify as to [fol. 2160] whether all the damages to those cars in the woods, or repairs for damages done in the woods, were paid by the Wilson Cypress Company. It is my understanding that was the way of the contract. I don't think that would make any difference in this matter of $1.00 a day and 6 mills per day. I don't think it would make any difference that only part of the cars were not used by the Wilson Cypress Company part of the time for this reason: the cars were assigned to the Wilson Cypress Company upon their request in order for them to conveniently protect their service. You understand there was a car being loaded in the woods, and a car en route to Palatka, and a car also at Palatka. Yes, there was a Sunday in there in which nobody was doing anything. This order of the Interstate Commerce Commission in Docket 18701, became effective January 30th, 1931. The charge per car before that order went into effect for the short line railroad for box cars and flat cars, was 6 mills per mile, if

those short line railroads were not subscribers to the American Railway Association Car Service at the time of the agreement, which provided for a rate of $1.00 per day. The $1.00 per day was paid, provided they were members of the Car Service and per diem agreement, and 6 mills was paid to January 30th, 6 mills per car mile. That was the same thing that was in this Brooks-Scanlon Corporation contract. Now with respect to the Cummer Cypress Company train load movement, Homosassa to Lacoochee, Exhibit 78-A, I did not assume that all 75 of these cars were in the service of the Cummer Cypress Company every calendar day in the month. There were 75 cars assigned to the Cummer Cypress Company for the protection of this log movement between Homosassa and Lacoochee. We charged $1.00 for each calendar day in the month. The engines which were assigned to the Cummer Cypress Company service during this month of May 1929, were engines No. 802, 803 and 819. I checked that for the month of May.

[fol. 2161] By Mr. Gutheim:

These 125 cars assigned to the Wilson Cypress Company never floated back into our service without being replaced, as they were assigned and being equipped with those stakes, we didn't use them. So far as I know, we didn't get one on our line which strayed from this particular movement. I looked for the month of May to identify the individual number of cars assigned to the service and I also examined the running records of cars and there were none of them that were not in the service between Hines and Palatka. Some of these cars were damaged, but I couldn't testify whether they were subject to heavy damage. It is correct that there would always be a certain percentage of those cars in bad order. I checked up to see whether these cars were subject to demurrage and I found that they did not pay any demurrage.

Redirect examination.

By Mr. Alston:

The Atlantic Coast Line Railroad did not make a practice of renting locomotives to private persons. I understand that the 125 cars used in this Hines to Palatka move-

ment were divided into cars from Hines to Palatka, cars returned from Hines to Palatka, and cars in the woods, and that was the reason there were 125 cars assigned for that purpose. I understand that the lumber company figured (Page 700 B of Tes.) that it required 125 cars to protect uninterrupted service on a basis of the schedule on which they wanted to operate that train. Those cars were withdrawn from the Atlantic Coast Line service. If the Atlantic Coast Line had put these cars on another railroad, the rate would be $125.00 a day until returned to the Atlantic Coast Line.

[fol. 2162] Recross-examination.

By Mr. Adair:

Q. You know, of course, it was customary for the Atlantic Coast Line to haul some revenue freight in these trains and in these cars on the return trip, do you not?

A. I understand it was customary for revenue freight to be handled in the train, but I didn't understand there was that revenue freight in these cars. To the best of my knowledge there was not, but I couldn't say positively that there was not.

(Witness excused.)

C. G. Sibley, sworn by the defendants, testified as follows:

Direct examination.

By Mr. Alston:

My residence and business address is Wilmington, North Carolina, and I have been with the Atlantic Coast Line Railroad for 34 years and am now Assistant General Manager of the Atlantic Coast Line Railroad. I handle the operations looking to the making and maintenance of tracks we employ in train and private service. I have the revised agreement between the enginemen and the Atlantic Coast Line Railroad that became effective September 1st, 1927, and the rules effective April 1st, 1929. On page 6, Article 5 is very brief and clear. It reads: "In all

classes of service covered in Article 4, 100 miles or less, 8 hours or less, straight away or turn around, shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, according to class of engines or other power used." Article 4 refers to freight service employees. It is quite lengthy and it simply gives the rate of pay for engineers in freight service. The ar- [fol. 2163] ticle says that depends upon the class of locomotives used. That agreement and those rules are now in effect. Engines of the class of engines 802, 803 and 819, which were those used between Hines and Palatka and on the Homosassa and Lacoochee movements, weigh 170,000 to 200,000 pounds on driver and carry a rate in our freight service of 7.88¢ per mile, or $7.88 per hundred miles. It is correct that time and distance are both to be taken into consideration in determining these rates of pay and the employee gets the benefit of the run that brings in the largest revenue. A haul of 119 miles is equal in time by the clock to 9 hours 31 minutes and that is so regardless of the time it was run if performed in less than 9 hours and 31 minutes. It is correct that if that was performed in 6 hours, the rate of pay would be as though 9 hours and 31 minutes had been consumed. If the run took more than 9 hours and 31 minutes, the employees would be paid the actual amount of overtime, or the excess above 9 hours and 31 minutes, at a rate stipulated in the agreement as 3/16 of the regular rate, which is fully expressed as time and a half of what they make for their regular hours. The pay of the enginemen on the engines of the class as described, is 7.88¢ per mile for a distance of 119 miles, provided the run was accomplished in not over 9 hours and 31 minutes. That came to 119 times 7.88¢ if the run did not take over 9 hours and 31 minutes. The fireman was paid for the same number of miles and his hours by the clock restrictions applied, and his mileage rate was 5.96¢ per mile. His overtime was at 3/16 of the straight time rate. To express that, it is $1.11¾¢ per hour for overtime. The engineer's rate of overtime on that other type engine is $1.47¾¢ per hour. The whole thing is predicated on 100 miles per day according to Article 5. The man is given a minimum of $.88 for running 100 miles on each calendar date he performs the service. 3/16 would inflate that rate one-half, and that divided by 8 would give you

his hourly rate. In other words, -hie $7.88 for 8 hours' work is very nearly $1.00 an hour and the overtime rate would be $1.50 an hour.

[fol. 2164] Q. I cannot understand how the inflation of a particular unit by 3/16 would make one and one-half.

A. 3/16 of the straight time rate. 3/16 of the daily rate. (Page 765 B of Tes.) It is 3/16 of a whole day's work. On the Homosassa to Lacoochee movement, which is about 70 miles, the railroad must pay for a minimum of 100 miles regardless of the run being less than 100 miles. Article 7 on page 7 of this agreement reads something like this: That runs of 100 miles or less, overtime will begin at the expiration of 8 hours; overtime will begin when the time on duty exceeds the miles run divided by 12½. Overtime should be paid for on a mileage basis or an hourly basis of 3/16 of the daily rate on the class of engines. To get the correct pay, you must first determine the engine or locomotive and then the length of the run and observing the minimum of 100 miles and then dividing the mileage by 12½ to determine the number of hours and minutes overtime, if any. The firemen's and engineer's agreements are identical. The rate of pay of conductors and trainmen is without respect to the weight of the engine. The details pertaining to their rate are practically the same as applied to enginemen and firemen, except the quality of the engine is not taken into consideration. The weight of the engine on drivers sets the rate for enginemen and firemen, but does not set it for conductors and trainmen. They are paid according to the rate expressed in the agreement. In each instance, however, the basic rate is computed on a minimum of 100 miles for each class, or a basis of 12½¢ on 8 hours, and paid on the mileage basis at the rate of 3/16 of the daily rate. I have a comparison of the rates of pay for the years 1908, 1913 and 1930 for freight train service employees. This statement is only a comparison of the rates paid to employees in the freight train service. The first figure on this comparison applies to locomotives on drivers weighing 100,000 to 140,000 pounds. This first figure is the comparison of the rates paid in through freight service to [fol. 2165] employees of a through freight train. The years appear for 1908, 1913 and 1930. They are on a per hundred mile basis, as that is the yard stick determining the basis of pay of employees in this class of service. A through

freight train crew, as stated here, consists of five men—an engineer, fireman, conductor, brakeman and flagman. That is the standard crew on the Atlantic Coast Line Railroad.

Q. Now, rather than to draw it out too much, let's take the last line, the crew rate in 1908 and that appears to have been $12.37, $15.86 in 1913 and $30.12 in 1930.

A. The increase in 1913 over 1908 was 28.2%, and the increase of 1930 over 1908 was 143.5%, and of 1930 over 1913, 89.9%. The next figure is overtime rate with the excess time above 8 hours per 100 miles that we have to pay. There is a slight variation for several years. For the engineers and firemen, it was 8 hours on the 100 miles. That is 12½ miles per hour, but for the conductors, flagmen and brakemen for the years 1908 and 1913, the standard basis was 12 miles per hour, which allowed 8 hours and 20 minutes to be consumed before overtime commenced on 100 mile trips. The rate shown for the crew making 1 hour overtime in 1908 was $1.20½ and that expanded to $1.86 per hour in 1913, and $5.65 per hour in 1930. The increased percentage of 1913 over 1908 was 54.4%, and 1930 over 1908 was 368.9%, and 1930 over 1913 was 203.8%. The next figure covers the rate paid to crews of local freight trains. The crew of the local freight train consists of six members —engineer, fireman, conductor, flagman and two brakemen. The crew rate for a 6-man crew in that service for 1908 was $14.58; in 1913, $18.92, and in 1930, $38.09 for 100 miles. The relation of the 100 miles minimum applies to crews in local as well as through freight service. Log trains are paid on the through freight basis. They are classed for [fol. 2166] that purpose as through freight. There is a reclassification rule in the event a train picks up revenue freight at four or more points, making a through rate expand to the local freight.

Court: You have not any figures as to 1929? Is that the same as 1913 or 1930, or what was it?

A. The rates were fixed in 1927 and remained constant until 1932. The 1908 rates were fixed by an agreement with the engineers in 1907. I am not positive of the date. These agreements sometimes run for 1 year, or until we negotiate a new one. They run for indefinite periods—some last only 1 year, and some last 5 or 6 years. There were half a dozen changes between 1913 and 1928. The overtime rates for local freight trains appear on the bottom half of page 2.

Overtime rates are slightly different from the through freight rates. That is, the basis of overtime for local freight service differs slightly from that made in through freight service, because their time is figured on a speed basis for some period at 12½ miles an hour, depending on the agreement existing at the time of this study, or rather the year the rates were in effect. On local freight trains the through rate for an hour's overtime, if made, was $1.33 in 1908; $1.96 in 1913, and $7.14 1/4 (page 770 B of Tes.) in 1930. The percentage of increase 1913 over 1908 was 47.4%, and 1930 over 1908, 437%, and 1930 over 1913, 264.4%. On page 3 appear the rates applied to employees in yard service operating yard engines. The crew of a yard engine normally consists of five members—engineer, fireman, foreman and 2 switchmen. They are paid on a daily basis and not a mileage basis. That rate is generally a minimum of 8 hours. This service is performed on any calendar day. In the year 1908 they were paid a day for 12 hours work. In 1913 all members of the crew, except the foreman, were paid a day's pay for 12 hours work. The foreman was paid a day's pay for 10 hours work. The crew [fol. 2167] rate for a day's work in 1908 was $10.76; in 1913, $13.66; and in 1930 $33.17. On account of the variety in the number of hours consisting of a day's work, I had to reduce the rates to an hourly rate in 1908. The hourly rate for the crew was 89½¢ in 1908; in 1913 it was $1.19 5/6¢, and in 1930 $4.14¾. The increased percentage of 1930 over 1908 was 363.4%; 1930 over 1913 was 246.1%, while 1913 over 1908 was 33.9%. The overtime rates per hour for time consumed in excess of hours per day is shown on page 4. It shows a 12-hour day for 1908 and 1913, and 8 hours for 1903, appearing at the top half of page 4. The crew rate for an hour's overtime made in 1908 was 96¾¢; in 1913, $1.33⅓ and in 1930, $6.22½. The increase from 1913 over 1908 was 37.8%; 1930 increase over 1908, 543.4%; and 1930 over 1913 is 366.9%. At the bottom half of page 4, I have shown the rate per hour paid to shopmen in the mechanical trades on the system. Those are hourly rates for the actual hour's work, provided they were in excess of 8 hours for the day's work. That is to say that 8 hours were the day's work in mechanical trades in 1930. The number of hours in 1913 were 9; the number of hours in a day's work in 1908 were 10. I have simply shown the comparison in the hourly rate, not in the rate that the man re-

ceives for his day's work. I will take the top one for example. The machinists in 1908 were paid at the rate of 32¢ per hour. In 1913 at 40½¢ per hour, and in 1930 at 80¢ per hour. Now the increase 1913 over 1908 was 26.6%, and the increase 1930 over 1908 was 150%, and the increase 1930 over 1913 was 97.5%. The rate for other artisans, or whatever they call themselves, is shown, and in some cases the rate of increase was greater. On page 5, I have shown the comparison of the majority rate applied to track section foremen and track section laborers, and as the majority rate increases that was the rate applied to the majority of men in that service. The rate for foremen on some certain classes of section was slightly higher, but this represents the majority pay in effect. It was $50.00 per month in 1908 for a ten hour day; in 1913 it was $58.00 per month for a [fol. 2168] ten hour day; and in 1930, $132.00 per month for an 8 hour day. The laborer's rate was 90¢ per day in 1908 for ten hours work; $1.00 a day in 1913 for ten hours work, and $1.60 a day in 1930 for 8 hours work. I have shown the hours constituting a month's work, based on 26 working days for the month. To afford comparison of the rates, I had to reduce that study to an hourly basis because of the variety of hours that constituted a day's work. In 1908 a section foreman was paid at the rate of 19.2¢ per hour. In 1913, 22.3¢ per hour, and in 1930 at the rate of 63.4¢ per hour. The increase 1913 over 1908 was 16.1%; 1930 over 1908, 230.2%, and 1930 over 1913, 184.3%. For section laborer the rate per hour is 9¢ in 1908, 10¢ in 1913, and 20¢ in 1930. The increase 1913 over 1908 was 11.1%, and 1930 over 1908 was 122.2%, and 1930 over 1913 100%.

(Objection by Mr. Adair to Defendant's Exhibit 5B, that it is irrelevant and immaterial to the issue in this case, and not the best evidence, and incompetent.)

Defendants' Exhibit 6 B, which is headed "Atlantic Coast Line Railroad Comparison of Train Mileage" shows the comparison of train mileage on the Atlantic Coast Line Railroad for the years 1908, 1913 and 1930. The top bracket states that the total train mileage in 1908 was 14,991,089 miles. Train mileage shown as revenue is mileage production of revenue to the company. The mileage shown as non-revenue is non-productive mileage, such as work trains running and repairing tracks, or wreck trains

run for the purpose of repairing the track, and train mileage of that character. It is true that revenue would take place with freight cars even though there was no revenue freight in the cars. The mileage for the year 1908 was 14,991,089, and for the year 1913, 18,213,211, and for the year 1930, 17,186,406 miles. The next bracket shows the comparison of train mileage and wage cost of train and yard engine employees, who were engaged in producing the train miles shown in the bracket immediately above. The total [fol. 2169] wages as paid in 1908 to train and yard engine employees was $2,699,243.00, or an average of 18¢ per train mile. For the year 1913 the total wages paid was $3,925,997.00, which provides an average wage of 21.6¢ per train mile. For the year 1930 the total wages paid were $8,011,108.00, or an average wage per train mile of 46.6¢. The percentages of increase are shown based on the average wages per train mile, because of the necessity of showing the unit of service produced by the wages paid. 1913 over 1908 the wage increase amounted to 20%; 1930 over 1908, 158.9%, and 1930 over 1913, 115.7%. The next bracket shows the comparison of train mileage and wages of all employees of the company (officers and officials excepted). In producing the unit of service of train miles, all of the employees of the company are engaged in that production. The total wages paid to all employees, except officers and officials, in 1908 was $9,370,511.00, or at a rate per mile, per train mile, of 62.5¢. In 1913 the total wages were $13,109,524.00 or at the rate of 72¢ per train mile. In 1930 the wages were $30,315,908.00 which produces a rate of 176.4¢ per train mile. The percentage of increase for 1930 over 1908 was 15.2%; for 1930 over 1908, 182.2%; for 1980 over 1913, 145%. Since the wages of officers also go to produce these same train miles, the last figure shows a comparison of train mileage and wages for all employees, including officers and officials, which for the year 1908 the total wages paid were $9,800,407.00, which produces an average per train mile of .656¢. The wages in 1913 were $13,622,425.00, or an average per train mile of .748¢. For 1930 the wages were $31,721,798, which produces an average per train mile of $1.846. The percentages of increase are shown 1913 over 1908 as 14%, and 1930 over 1908, 181.4%, and 1930 over 1913 146.8%. I offer this statement as Defendant's Exhibit 6 B.

(Objection by Mr. Adair on the ground that the Exhibit is immaterial and irrelevant to the issue, that it is not the [fol. 2170] best evidence and that it is incompetent and the comparison is insufficient.) (Page 775 B of Tes.)

(Witness continuing:)

This statement, Defendant's Exhibit 7 B, shows the ratio of wages to operating revenue of the company for the fiscal years 1908, and 1913, and the calendar year 1930. The accounts in 1908 and 1913 were on the fiscal year basis, that is, ending June 30th. The total operating revenues of the company in 1908 were $26,029,052.00. The wage bill of the railroad in that year for all employees, including officers, was $9,800,406.00. The column at the right shows that for each dollar of revenue taken in by the company, they had to pay out in wages 37.7¢ for the fiscal year ending June 30, 1908. For the fiscal year 1913, ending June 30th of that year, the operating revenue of the company was $36,123,072.00. Of that sum the railroad had to pay in wages to its officers and employees $13,622,425.00, and out of each dollar of revenue they had to pay in wages 37.7¢. For the calendar year 1930, the operating revenues of the company were $62,019,957.00, out of which they had to pay in wages $31,721,798.00. For each dollar of revenue they had to pay in wages during that year 50.3¢. I have jurisdiction of wages and payment of them. I direct the timekeepers as to the payment of wages under the agreements which I negotiate, acting for the General Manager with employees' committee. Not all of these various men are under my jurisdiction. For example, these wages include the wages paid to officers with whom I have nothing to do. They include the wages of a lot of employees of the company who are not organized and I have nothing to do with them. My forte is to negotiate with committees representing organized labor and my jurisdiction is only over that part of these wages that are paid to employees of organized labor. The figures as shown by these Exhibits which I have offered, were made from the records of the company; that part of the record dealing with wages and dealing with revenues. Of course, all of these statistics are prepared [fol. 2171] in the accounting department of the company and the timekeepers over whom I have jurisdiction, make their report to the accounting department. There the figures are accumulated. The figures for 1908, 1913 and 1930

were already in the company's reports already assembled. To secure the figures for this statement, it was only necessary to refer to the records of the company. Those records were assembled in the office of the Comptroller. That is the accounting office of which Mr. Lamb is the General Auditor. The Comptroller is the senior of the General Auditor and he is the recognized accounting officer of the road. I say "recognized." I mean the Interstate Commerce Commission recognizes him as the chief accounting officer of the road. I now offer in evidence the Exhibit headed "Atlantic Coast Line Railroad Ratio Wages to Operating Revenue" as Defendant's Exhibit 7 B.

(Same objection by Mr. Adair as was made to Defendant's Exhibit 6 B and motion by Mr. Adair to strike Defendant's Exhibits 5 B and 6 B and 7 B, and to strike all the testimony of the witness given from those exhibits.)

Cross-examination.

By Mr. Adair:

During the period between 1908 and 1913, the Atlantic Coast Line Railroad Company purchased quantities of larger power and had to purchase larger rails to hold that power, and with the larger power they were able to increase the efficiency of operations to some extent. In securing this increased efficiency, it was only done by the expenditure of a huge sum of capital money. The same thing applies to the period between 1913 and 1930. The increase between 1913 and 1930 was greater than the increase between 1908 and 1913. There was very little large [fol. 2172] power purchased between 1908 and 1913. The majority of purchases occurred between 1913 and 1930. I would say the majority of the purchases were subsequent to the war period; either during or subsequent to the war period. During that period, we increased the capacity of our cars substantially also. The company purchased a number of cars of 80,000 pounds capacity, with a larger ownership of cars of 60,000 pounds capacity, and incidently we think the majority of the cars of the company at the time were still 60,000 pounds capacity. The general effect of that has not been to help the wage question, because we paid during these three different years on a basis

of 100 miles for 8 hour service and the speeding up of the trains simply resulted in the taking of 6 hours to make the 100 miles, where they had been taking 8 hours to make the 100 miles, but the employees still got the wages. I think that the car miles per day was increased and of course our engine miles per day. (Page 780 B of Tes.) It is true that the whole process and operation of transportation was speeded up, both as to amount of tons hauled in the trains and in the rapidity with which the freight trains were transported from point of origin to point of destination, but it was not without the very substantial increase in the operating cost to secure that result. The faster trains burn more coal and the larger engines burn more coal. The larger engines take a higher rate of pay than the smaller engines. Incidently, we retained in service during those years, that smaller power which we formerly had. The net result was certainly in the interest of economy. I do not have the figures concerning the revenue ton mile of freight transported by us in 1913 and 1930.

Q. Do you not think that would be a more reasonable and accurate basis of comparison with wages than would the train mile if they consist of the train in 1930 was substantially the same as they consist of the train in 1913?

[fol. 2173] A. I don't think the net ton miles would be any great benefit for comparative purposes, for to handle net ton miles you must also handle a great deal of dead ton miles, unproductive of any revenue, but going to secure the ascertainment of productive revenue. If you have sufficient business to load your engine to capacity, the proportionate cost of handling a heavily loaded car is substantially less than handling a car loaded with the minimum weight and it is more profitable to the railroad. It is theoretically true that it is more economical to handle a larger number of cars in a train than it is a fewer number of cars in a train. Actually we have to operate many trains that are far below the engine rating capacity. If we could operate them at or near the engine rated capacity, we would then secure the traffic man's dream and the operation would be more profitable. I have not the least idea of what the weight of a log truck is. The tare weight of an 80,000 pound flat car is about 17 to 19 tons, I think. I don't know definitely, though I have seen those rates stenciled and they might run from 32,000 for the 60,000 capacity flat, to 37,000

or 38,000 pounds for the heavy capacity flat. In the position of General Manager, I do not have to deal with the specifications for new cars and things of that sort. The General Superintendent of Motive Power has charge of cars. The officers under him are Superintendent of Motive Power and Master Mechanic.

By Mr. Gutheim:

Q. Mr. Sibley, can you take this pamphlet from which you testified on yesterday, which has reference to the wages of engineers, and outline to the court the provisions therein that would determine the wages to be paid to the engineer handling the engine on a log train from Hines to Palatka? [fol. 2174] A. The engineer of the log train from Hines to Palatka, handled by an engine with weight on drivers of 170,000 to 200,000 pounds, would be paid 7.88¢ per mile for the distance transported, which I think is 119 miles. That distance was accomplished in less than 8 hours, or less than 9 hours and 31 minutes from the time he reported for duty until he completed the trip and was relieved of his engine at the end of the run. If more than 9 hours and 31 minutes were consumed, he would be paid additionally in the way of overtime at the rate of 1.47¾¢ per hour for the number of minutes of overtime that he makes, as we pay on a minute basis. That overtime means time in excess of 9 hours 31 minutes in this instance, irrespective of whether that is the actual time for the trip but predicated upon the time that he reports for duty, as it may be several hours before he starts the trip and the time when he leaves his engine at the completion of the trip. Article 4 of the pamphlet shows the rate of 7.88¢. Article 7 prescribes the overtime rule from which we deduce overtime if the employment extends over 9 hours and 31 minutes on 119 miles. The same overtime rule in Article 7 applies to overtime in cases of hauls of less than 100 miles. For a haul of 60 miles, he would be paid for 100 miles if he consumed his 8 hours from the time he reported for duty until the time he was relieved of his engine at the completion of his trip. If he consumed over 8 hours from the time he reported for duty until he was relieved of his engine at the end of the trip, he would be paid additionally at overtime rates for all time in excess of 8 hours. 8 hours is the standard day and 12½ divided into 100 would give you the same 8 hours. The

words "log trains" are not expressed in this pamphlet, but log trains fall in the classification of through freight trains. (Page 785 B of Tes.) There is a particular provision in this pamphlet with respect to the payment of engineers running trains on branch lines. Article 28 refers to branch lines. There is nothing in this article which associates log [fol. 2175] trains with branch line operations so far as I recall. On Page 30 the words "log trains" appear in the list of branches under third division. The listing of the log trains under branches of the third division has no particular significance because the rate of pay on branch lines is the same as the rate on the main lines. This difference exists as to the time on duty on the main line. If after completing his trip he remains on duty hostling his engine, he is paid extra over and above everything else, but on a branch line if he remains on duty to hostle his engine after completing the trip, the time runs continuously and does not involve the extra payment that applies to the main line. If instead of hostling his engine he does some switching because there is no yard engine at the point of origin or the point of destination, his pay for his services as road engineer includes that switching on the branch line. It includes that service on the main line if road overtime is made. Under the branch line classification, he would not be entitled to receive extra payments for initial switching, for final switching or for hostling. I mean his payment is over and above for the road's part of the miles he travels, or for the road overtime provisions that applied to the main line.

Q. In this revised agreement between the engineers and the company under Article No. 28, subdivision F, title "Branch Lines," Item 1 says: "In branch line service where differentials now exist in either rates, overtime basis, or other conditions of service, the main line rates shall be applied for the class of service performed. Miles in excess of the mileage constituting a day will be paid pro rata. If existing rates are higher than the revised main line rates, they shall be preserved, but the excess in the rate over the main line rate may be applied against overtime. The passenger or freight overtime basis shall be applied according to the rate paid. Other existing conditions of service shall not be affected by the foregoing." Now, will [fol. 2176] you tell us, Mr. Sibley, just how we would apply

the rule in the sentence "miles in excess of the mileage constituting a day will be paid pro rata," bearing in mind that a log train is classified as a branch line service?

A. The log train is classified as branch line service and is paid at the through freight rate. If he makes less than 100 miles, he is paid for 100 miles. If he makes in excess of 100 miles, he is paid for the additional miles over 100 at the same rate per mile as paid for the first 100 miles. If the time on duty is greater than 12½ miles per hour divided into the actual miles for the trip, 100 or more, is greater than the hours produced he is paid the 3/16 rate for the excess time, the same as the man in main line service receives. "Miles in excess of the mileage constituting a day will be paid pro rata" means pro rata to the rate that is paid for the first 100 miles.' The 3/16 does not become involved until the number of hours exceeds 12½ divided into the mileage for the trip. That is, over 8 hours, provided the mileage in the trip is 100 miles or over. It is correct that on the engine that has this 119 mile run from Hines to Palatka, the engineer does it in 9 hours and 31 minutes, which is a full day with no overtime. If he takes 9 hours and 32 minutes, for the extra minute you will have to divide 60 into 1.47¾. That is, he gets the day rate for the hour and you divide that by 60 to get the minutes. In the next rule 2, under Item F above quoted, headed "Branch Lines," after disposing of overtime in passenger service it says, "Overtime in freight service shall be paid for on the minute basis at an hourly rate of 3/16 of the daily rate, according to the class of engine used." That would produce the same results we have just agreed upon.

Q. Now, what I am trying to get straightened out in my mind, is what is the reason for the two totally different styles of language for overtime, if they come down to the same figure?

[fol. 2177] A. Point out to me, please, what provision you mean.

Q. The first one in rule 1 says "miles in excess of the mileage constituting a day will be paid pro rata," and the second one says "overtime and freight service shall be paid for on the minute basis at an hourly rate of 3/16 of the daily rate according to the class of engine used." It seems to me they come down to the same thing in a different language.

A. No, I tell you where that language appears in the agreement. There was a time when branch line engineers were paid a rate per day. The organizers wanted some particular stipulation in there converting that to a mileage rate, and that was written in so they would understand it, as they wished it expressed. As far as the result is concerned, it is the same. You might say that "miles in excess of the mileage constituting a day will be paid pro rata" is superfluous language. (Page 790 B of Tes.) That quotation does not mean miles in excess of 100 miles, if 100 miles is the day done within 8 hours, because if the excess miles are done within the span of 12½ speed basis into the actual miles, it would then produce overtime. For example, 120 miles in branch line service would not bring any overtime until he had been on duty about 9 hours and 31 minutes. The only excess payment, if you wish to so term it, is for the 19 miles he makes above 100 which he is paid for at the pro rata mileage rate. If the engineer accomplished the task of taking the log train from Hines to Palatka within 9 hours and 31 minutes, he would get more than a day's pay because the day's pay is exceeded at 100 miles and he would be paid at 119 miles, which would be about 1/5 more than a day's pay. It is correct that he would not go on the overtime list because he had gotten through in 9 hours and 31 minutes or the result of the division of 12½ into 119. It is correct that the man who handled the log train for a shorter haul, say for 60 miles, would get his day's pay so long as he got through in 8 hours and he would have no overtime so long as he finished up inside of 8 hours, and that is so regardless of the fact that he [fol. 2178] may do switching within the limited time at the point of origin or at the point of destination.

By the Court:

Q. I notice in one of your statements here that after deducting the total amount of wages paid in 1908 from the total revenue, you have left between $22,000,000 and $23,000,000, and in 1913 about $25,000,000, and in 1930 something over $30,000,000. Now in 1929, after paying wages out of total revenue, would there be more left than there was left in 1930? Have you any figures on that?

A. No, sir, I have not those figures. My recollection is that the proportion of the wages, that is the ratio of the

wage down in 1929, was just about what it was in 1930. Our revenue would be greater in 1929 than in 1930. I think the company's business in 1929 was greater, and naturally greater than in 1930, and the revenue would necessarily be greater. The wages were not about the same. The wages were greater in 1929. I do not know what the net difference would be, except that my recollection is that the proportion paid for wages per hundred was just about what it was in 1930. That is, for every dollar taken in, we paid fifty cents for wages.

By Mr. Alston:

You will have to get an accounting officer to tell you whether the increased investment and return on investment is taken into account in operating expenses. Operating expenses do not include any interest charge or dividends or any other form of return on capital. The investment in 1930 was a great deal more than in 1913. These ratios shown between wages and revenue on my Exhibit No. 7 B, are not within my daily contact, except that contact I have with the accounting records of the company. The ratios [fol. 2179] and comparisons shown on my Exhibit No. 6 B, are also from the same source. Exhibit 5 B, is made up from provisions of briefs, the records of which are compiled in my office as to train service and yard service employees, and in the motive power department and maintenance of way department for shops and roadways. I would not have needed any more information to make up this Exhibit 5 B, than the scale of payment or the items in effect in 1913 and 1930. The items of trainmen and yard service named the rates from which these figures were taken. There are some items that name rates, but the rates or records of the company are not expressed in the items that are shown by the statements. They are in the files or on the payrolls themselves. The various scales of payments about which I testified, are the payments which were being made at the time covered by my evidence and for a greater time than the year 1930. They are not theoretical payments, they are payments which were actually made by the Atlantic Coast Line Railroad during the periods testified to by me. Operating expenses do not in-

clude any charges for bond interest or for the accumulation of the fund to retire the bonds.

Recross-examination.

By Mr. Gutheim:

Where I show on this Exhibit 7-B the item of wages as against operating revenues, those items of wages represent the totals of the payrolls of the company. That means actual payment. (Page 795 B of Tes.) It is out of the total payments as so recorded in the books of the company that I have obtained these system ratios of wages to operating revenues.

By Mr. Adair:

The weight of engines Numbers 803 to 819 inclusive, on [fol. 2180] drivers was 170,000 to 200,000 pounds. That is the basis for the calculation of the pay of the enginemen and firemen. I couldn't tell you from recollection, and I have no data as to what the tractive power of these engines is. On these engines the pay of the fireman would be $5.96 per 100 miles, at an overtime rate of 1.11 ¾¢ per hour. It is correct that his basic rate of pay would be 5.96 times 119 miles, and his overtime would not commence to run until he had been on duty 9 hours and 31 minutes. I said $5.96 per hundred miles. The conductor would be paid $6.62 per hundred miles, or as you have it there, 6.62¢ per mile. It is correct that his rate of pay would be 6.62¢ times 119 miles and with no overtime mentioned until he had been on duty 9 hours and 31 minutes. The brakeman's pay would be $5.20 per hundred miles. That would be 5.20 times 100 miles and no overtime commenced until he had been on duty 9 hours and 31 minutes. The time that he consumed in making the run from Hines to Palatka would not necessarily be the time he was on duty. If he was only on duty 7 hours, he would still get the 119 miles. The rates which I have testified to as to engineers, firemen, conductors, etc., are the same rates shown in the 3rd column of the first page of my Exhibit 5 B, for conductors, flagmen and brakemen, but not for engineers and firemen, because the light weight engine is used in the illustration on the Exhibit. This engine is 140,000 pounds and he was asking me about a heavy weight engine. On

the light weight engine the brakeman and flagman are paid at the same rate. The jobs are interchangeable and a train crew consists of an engineman, fireman, conductor, flagman and brakeman. On a locomotive having a weight of 100,000 to 140,000 pounds, the engineer's pay is $7.46 or 7.46¢ per mile, and $5.64 for the fireman. The rate of pay of the conductor, flagman and brakeman does not vary with respect to the weight of the engine. The weight [fol. 2181] on drivers of engine No. 1003 is 100,000 to 140,000 pounds, and the weight on drivers of engine No. 219 is the same, and of engine No. 905 is the same. Engine No. 1119 is not a road engine—it is a yard engine. It has the same weight on drivers. The distance from Homosassa to Lacoochee is 68.1 miles. Assuming that the engines were of the 100,000 to 140,000 class weight on drivers, and assuming that the time on duty is not over 8 hours, the engineer would receive $7.46, the fireman $5.64, the conductor $6.62, the brakeman $5.20 and the flagman $5.20 or a total of $30.20. Assuming that a part of the time the engine on that road was 170,000 to 200,000 pounds class, the engineer would receive 7.88¢ and the fireman would receive 5.96¢, otherwise the cost of the crew would be the same. The General Manager approves the rates for the rent or hire of locomotives, but I personally do not participate in their setting. The only rate that I know is that 1 mill per pound of tractive effort should we rent a locomotive to a neighboring road. That is in my department, but not within the immediate scope of my operations.

(Witness excused.) (Page 800 B of Tes.)

O. L. Brown, being sworn by defendants, testified as follows:

Direct examination.

By Mr. Alston:

My name is O. L. Brown. My residence is Wilmington, North Carolina, and I am Assistant to the Purchasing Agent of the Atlantic Coast Line Railroad. I have been with the Atlantic Coast Line Railroad 44 years and 10 days. I have had to do with purchasing for the Atlantic Coast Line Rail-

road 32 years and 6 or 7 months. I have a statement as to the relative supplies used by the Atlantic Coast Line Rail-[fol. 2182] road. I will mark this proposed Exhibit as Defendant's Exhibit 8 B. This document shows the prices which were paid for the various items on here during the period stated, 1908, 1913 and 1930. During 1908 we paid .343¢ each for cross ties. During 1930 we paid 85¢ and during 1913 we paid .348¢. The words "F. O. B." on these lines and below that "A. C. L." mean freight on board the Atlantic Coast Line Railroad. That is, freight on board at point of delivery to the Atlantic Coast Line Railroad. The next column which is headed "Unit" represents the unit of purchase. In cross ties, it means each cross tie. A switch tie is a piece of timber they cut in sets, usually of varying lengths to meet the curve in the switch. It is longer than the ordinary cross tie—usually very much longer. In the letters "M. B. M. Ft." the "M" is 1,000 and "B. M." stands for board measure, and "Ft." is feet. We paid $12.80 per thousand for these in 1908, $13.81 in 1913 and $21.26 in 1930. That was all for 1,000 board measure. Steel rail is purchased on gross tons, which means 2,240 pounds per ton. In 1908 the steel rail cost us $28.69 per gross ton, and in 1913, $30.40 per gross ton, and in 1930 it cost us $44.49 per gross ton. Frogs in 1908 cost us $29.43 each, in 1913 we paid $37.31 each, and in 1930 we paid $88.80 each. The statements on these exhibits correctly show the prices of the several articles listed under the column headed "Article."

Cross-examination.

By Mr. Gutheim:

Those materials indicated are the same in 1913 as in 1908. I made the comparison with the same units, the same items. The size of a 15-foot frog in 1908 was the same as the size in 1930, but it has heavier rail. For example, in 1908 it may have had 85-pound rail and in 1930 100-pound rail. It may have had also a different chemical composition. [fol. 2183] There is nothing in this statement which makes an allowance for that. I don't think that a 1930 frog is a longer lived frog than one in 1908 because of the chemical changes of the elements in it, because the present day frog we buy has to meet heavier traffic and greater impact, therefore it is a heavier constructed frog throughout and of a

greater weight resisting material. The first item of cross ties is an average of all kinds. There is a greater percentage of creosoted ties used today than in 1908. There are also more creosoted switching ties being used today than in 1908 and there is a greater percentage of creosoted bridge timber used today than in 1908. Going back to cross ties, this price does not include the price of the creosoted cross ties. It means green ties. We buy the green tie and treat it ourselves. We don't buy the creosoted ties. This is the price of the tie before it goes through the creosoting process. I don't know whether we were using practically the same number of Atlantic Coast Line Ties for the total road in 1930 as we were in 1908. We have the same size of tie going into the track today as in 1908. Going back to the column headed "F. O. B., A. C. L." and taking the item of locomotive coal, I can state that we get coal from the mines on the Chesapeake and Ohio Railroad. That would be delivered to us at Richmond and we would pay freight charges to Richmond from the mines. (Page 805 B of Tes.) Freight charges have increased from 1908 to 1930 and we would pay an increased freight charge and that would be true also in the increased price of coal.

By Mr. Adair:

In the item "box cars" I have $860.00 for 1908, $853.00 for 1913, and $1,865.00 for 1926. I didn't have any in 1930 and I gave the figure to you as near to that as I could. It was probably true that in 1930 the car had a lot of steel underframing in it, whereas in 1908 and 1913 it was wood, [fol. 2184] and in the nature of things, it would cost more to manufacture the 1930 car than it would the type of car that we bought in 1908 and 1913. I cannot tell you what we paid for our last 80,000 pound capacity flat car. We have not bought any flat cars since about 1906 or 1907. I don't remember what we paid for them. I didn't look it up. The price of an 80,000 pound capacity flat car would be something less than the price of a box car, but not a great deal less, in my opinion. I recall having sold flat cars since 1907 and 1908. We got $500.00 for them. I think the capacity of those cars was 60,000 pounds. We sold them perhaps two years ago. I don't know whether they were in pretty good order or whether they were taken from the regular operating rolling stock, and I do not recall how many we

sold. The Southern Sugar Company bought them, I believe.

Redirect examination.

By Mr. Alston:

The prices which I have quoted in this Exhibit 8 B, refer to the kind of commodity or articles listed which were in use at those times. My 1930 prices, the prices under my 1930 column, were the same as in 1929 and the first quarter of 1931. The flat cars which we sold had been in operation for a very long time.

(Statement headed "Atlantic Coast Line Railroad Company—Comparison of Prices Paid for Company Material" was introduced in evidence as defendant's Exhibit No. 8 B.)

(Same objection by Mr. Adair as was made to the previous Exhibits of defendant.)

By Mr. Gutheim:

I cannot say that the rail used by the Atlantic Coast Line over its line has increased in weight since 1908. (Page 808 B of Tes.) The standard of our rail in the main line has [fol. 2185] been increased, but to what extent, I don't know. When you increase the weight, you obtain a greater sum for the rent because the prices are based on the ton. That is our unit. Angle bars are so-called track material. When you increase the weight of the rail, you increase the angle bars. You require a larger tie plate for a larger size rail, and when you take a 15 foot frog, you have a heavier rail in the frog if you increase the weight of rail in your line, and the same would be true of switches. I don't recall any other items of track material that would vary in the same way.

(Witness excused.)

George W. Lamb, sworn for the defendant, testified as follows:

Direct examination.

By Mr. Alston:

My relations to the Atlantic Coast Line Railroad Company and my experience as an accountant were given in the

hearing before the re-reference to the Master, and I adopt those now. The simple answer to Mr. Saunders' Exhibit 70 A is that the figures set out in Lamb's Exhibit 123 and No. 23 reflect the expenses as actually drawn from the payrolls, time tickets, vouchers, etc., whereas the figures shown by Mr. Saunders are arbitrarily obtained. As you will recall, in May, 1932, at a hearing in Wilmington, North Carolina, we presented the timekeepers and every one who prepared any figure shown on Lamb's Exhibit 23 and 133, and we had in the room all of the vouchers, time tickets and everything else studied in Exhibit 23 or 133. Now, it seems to me that that is the best evidence of the actual cost, because as indicated by Mr. Sibley's testimony, taking the [fol. 2186] Hines to Palatka movement for the 119 miles, the time that he paid for was 9 hours and 31 minutes, and not 8 hours as used by Mr. Saunders. I don't believe it is necessary for me to elaborate on that feature of it, because Mr. Sibley fully covered it. In the ascertainment of the figures which I use, the rules for payment of wages as stated by Mr. Sibley were applied. Those are the actual wages paid to employees actually performing the service and making the run, and that, to my way of thinking, is without question a most accurate figure. The exhibit that I referred to has two numbers, No. 23 and 133. It has been referred to twice. Now, taking the account 394, fuel for train locomotives, Mr. Saunders has disregarded the actual tonnage issued to these particular trains and has reduced the cost of fuel for train locomotives on the basis of average tons per gross ton mile for the system, which is entirely wrong and purely arbitrary. The tons which I used in Exhibits 23 and 133 were the actual tons of fuel issued for these locomotives during this period. That was the actual price paid by the Atlantic Coast Line to the mines, plus the foreign freight to the Atlantic Coast Line, and the other five mills per ton mile for the haulage of the coal from the point where the Coast Line took it to the State line in Florida. As explained, when that exhibit was filed, we got our coal from two sections, namely the Alabama fields and from the Virginia and West Virginia fields. Now, it was necessary to haul that coal from these points down practically the entire length of the system from the Virginia fields to reach the Florida State line. I applied against the Hines to Palatka movement a cost of five mills per ton mile for that service, because we felt that in this

exhibit we are endeavoring to determine the cost from Hines to Palatka, and therefore it was entirely proper to include that. And now another indication why the system average is not applicable is a comparison of the coal con- [fol. 2187] sumed by the three districts of the Atlantic Coast Line Railroad. That is, as has been previously stated, the System is divided into three Districts—the First, Second and Third Districts. I will give you some figures showing the pounds of coal consumed per 1,000 gross ton miles separately for each of these three Divisions. You take in 1931 the First Division was 121.6, the Second Division 121.0, and the Third Division 182.1, and the System 133.2. Now, the figures that I will now read are the percentages for each of these Divisions to the System. That is, using the System as 100 per cent, the First Division was 91.22% of the System, the Second Division was 90.77 of the System and the Third Division was 136.61 per cent of the System. In 1932 the pounds of coal per 1,000 gross ton miles consumed on the three Divisions were as follows: The First Division was 136.1; the Second Division 126.3; Third Division 195.5; the System 144.2. The First Division being 94.37% of the System, the Second Division 87.59% and the Third Division 135.58%. The First Division is from Richmond to Florence with lines from Norfolk and Wilmington on certain branches. The Second Division was from Florence to Folkston, Georgia, which is the state line, and to Moncrief, Albany and Thomasville, Georgia, and from Thomasville, Georgia, to Montgomery, Alabama. The Third Division is wholly in Florida. The Third Division contains all the mileage in Florida except 126 miles not in Florida. The Third Division is in the southernmost part of the Atlantic Coast Line System. There are no coal mines whatever in Florida. This resulted in a very long haul of any coal for delivery to Florida points for consumption. Now the pounds of coal per thousand gross tons of the Third Division for 1931 were 149.7% of the First Division, and 150.5% of the Second Division. For 1932, 143.64% of the First Division and 154.79% of the Second Division. Mr. Saunders is again in error at page 269 of the transcript of the hearing of May, 1933, the Jacksonville hearing. He contended that as we raised the out-of-pocket expenses on the System ratios, we [fol. 2188] thereby brought in a relative proportion of the

cost to the balance of the System for out-of-pocket expenses for handling this coal. To the contrary, the expenses to the balance of the system were included in the out-of-pocket expenses of the system; but if the 5 mills per ton mile were not added to the out-of-pocket expenses of the Hines to Palatka movement, they would not be comparable with the system out-of-pocket expenses. Therefore, in using system ratio of out-of-pocket expenses to total haulage expenses, we brought in only a proper proportion of expenses other than out-of-pocket. It is not in there twice as indicated by Mr. Saunders. Now, I might illustrate it to your Honor in this way. (Page 813 B of Tes.) The out-of-pocket expenses, as has been repeatedly shown in this record, are those expenses of engineers, trainmen, firemen, conductors, flagmen, and the fuel and certain expenses that can be directly allocated. Now those expenses were incurred by the balance of the system hauling the coal down to the Florida State line, but where I took the expenses from Hines to Palatka, I didn't have any comparison expenses for that service. Therefore, it was necessary to bring in these 5 mills per ton mile for the Hines to Palatka movement to make the figures Hines to Palatka comparable with the system figures. Every one of Mr. Saunders' adjustment, therefore, is improper and the figures filed by me on Lamb Exhibits 23 and 133 are the best evidence of the actual out-of-pocket expenses for handling logs between Hines and Palatka. As previously stated, every figure on these exhibits was supported by vouchers, time tickets, payrolls, etc., all presented at the Wilmington hearing, and every opportunity given to cross-examine the witness preparing them. There was no break in the figures as obtained by these witnesses. This being true, the cost figures of 1.37834 cents per car mile and 43.002 cents per thousand gross ton [fol. 2189] miles as shown at the bottom of Mr. Saunders' exhibit are absolutely wrong, and instead of being as shown by Mr. Saunders, they should be 1.98996 cents per car mile and 62,083 cents per thousand gross ton miles, or making the figures comparable with Mr. Saunders' figures, it ought to be $.0198996 cost per car mile and $.62083 cost per thousand gross ton miles.

Court: These are the same figures as in your other Exhibit?

A. The figures shown in the second column of these figures, are the figures taken from my original Exhibit. Yes, sir.

Q. I am speaking of what you said ought to be cost per car mile and cost per gross ton mile. Are those figures not given in your previous Exhibit?

A. No. They were not used in that particular sense. I beg your pardon; these figures I just gave were used in the figures in the previous hearing. Now take Exhibit 71 A. This Exhibit being based on the erroneous revisions made in Exhibit 70 A, has all the imperfections pointed out in that Exhibit. Let us substitute between columns 2 and 3 of Mr. Saunders' Exhibit, the correct figure for line 1 of $2,398.55, and now if for the moment we accept Mr. Saunders' ratio out-of-pocket expenses to total line haul expenses shown on line #2 of 31.53%, and I should in passing call attention to the fact that this is based on erroneous distribution of operating expenses, which I will later discuss, but using for the sake of this illustration the figures used by Mr. Saunders, 31.53%, then item #3, line 3, comparison of total line haul expenses, by use of the above percentage, becomes $7,607.20 instead of $5,269.14, as shown by Mr. Saunders, and again for the moment accepting the switching cost of 30 cents per car, which is wrong as will later be shown, the total operating expenses, [fol. 2190] line #5, will become $7,922.50. Now, applying to line #6, the ratio of 78.84, as did Mr. Saunders, line #6 becomes $10,048.80 and deducting this from the revenue shown on line #8 of $10,135.20, would show a surplus of $86.40, instead of $3,051.94, but I want to call your attention to the fact that in the foregoing I have used, as did Mr. Saunders in line #6, the application of the system operating ratio of 78.84%, to raise line #5. This assumes it cost no more to earn $1.00 of revenue in Florida than on the System, which is not a fact because we have clearly demonstrated that it cost more in Florida. Further, as the Atlantic Coast Line earned 2.37 percent in 1930 for the system and 1.17 percent in Florida, the ratio of 78.84 percent does not provide for a 5¾ percent return, but merely equals the average return from all traffic for the system. Under the Transportation Act, we are entitled to a return of at least 5¾ percent. The investment in road and equipment for 1930, as shown by Mr. Lamb's Exhibit No. 1,

filed in this proceeding, was for the System, $305,977,599.00, and 5.¾ percent return on this investment should have netted the A. C. L. $17,503,712.00. However, we had a net railway operating income of only $7,241,304.00, in 1931 the same year that Mr. Saunders used here in his Exhibit. Therefore, to earn a 5.¾ percent return, it would be necessary to reduce the operating expenses by the difference between $17,503,712 and actual net of $7,241,304, which is $10,352,408. In other words, we would have had to reduce operating expenses by over ten million dollars to have earned the 5.¾ percent return. Now, the operating expenses in 1930 were $49,685,460.00, and deducting $10,352,408 would leave an operating expense necessary to earn a 5.¾ percent return on investment of $39,333,052.00. Our gross operating revenues for 1930 were $63,019,957. Therefore, the operating ratio would have had to be 62.41 percent in order to have permitted the Atlantic Coast Line Railroad to earn a 5.¾% return. Our actual operating [fol. 2191] ratio was 78.84 percent. Now, if we take the correct figures as indicated by me, for line #5, "Total operating expenses," $7,922.50, and divide that by 62.41 percent, and multiply by 100, we produce the revenue necessary to earn a 5.¾ percent return of $12,694.28 instead of $7,083.26, as shown by Mr. Saunders. Deducting from the $12,694.28 the amount on line #8, "Estimated Revenue" of $10,135.20, it would leave a deficit of $2,599.08 under a 5.¾ percent return from the revenue earned by this train handling logs, Hines to Palatka. Now, during the course of my cross-examination in Atlanta, in one of the earlier hearings, the question was raised as to the distribution of operating expenses as between terminal expense and line-haulage expenses on the basis used by Mr. Pettijohn, of the Florida Railroad Commission, who was testifying against the carriers in this case. Mr. Pettijohn assigned freight operating expenses in haulage and line haulage on the basis which has been frequently used by Dr. Lorens, of the Interstate Commerce Commission, and has been used by the Interstate Commerce Commission itself. In fact, they adopted it as their opinion and order in this case. Now, let me explain the operating expenses as reported to the Interstate Commerce Commission as set out in primary operating accounts, certain accounts in the maintenance of way and Structures and Transportation blocks of expenses, which may be directly charged to road or line-

haul, which are subdivided as between yard and others, there being road or line-haul expenses. Now, Mr. Pettijohn took all of the accounts in Maintenance of Way and Structures, and Transportation blocks of expenses, which were set up as yard, and determined the total amount of these and companion accounts set up as road; and from a summary of these accounts, getting the total yard and total road-haul, developing a total and dividing that into the total for yard, and total for road-haul, and determining the terminal expenses and handling expenses. Mr. [fol. 2192] Pettijohn testified that in the application of this formula, he developed that the terminal expenses were $10,764,146.94. The total freight expenses for 1929, which was the period under investigation, were $36,308,812.74, leaving as line-haul expenses $25,544,665.80. Now, the out-of-pocket expenses for the system were $6,920,683.75, and the ratio of line-haul expenses to the out-of-pocket expenses under Mr. Pettijohn's basis, would have been 27.09 percent. Now, if we substitute for Mr. Saunders' 31.53 percent on line 2, the entire system out-of-pocket expenses, to the total line-haul expenses as developed by Mr. Pettijohn——

Mr. Adair: If the Court please, Mr. Pettijohn has not made any such statement as that in this proceeding.

A. Yes, sir, he has.

Mr. Adair: In this proceeding?

A. Yes, sir, in this proceeding before the Master. Mr. Gutheim cross-examined me about Mr. Pettijohn's testimony in this proceeding before the Master. I beg your pardon, I overlooked the fact that he didn't testify before the Master, though, in this proceeding. Mr. Pettijohn testified before the Examiner of the Interstate Commerce Commission (Page 818 B of Tes.) in 1931 in July in Washington. That was in the reopening proceeding before the Interstate Commerce Commission after the Supreme Court of the United States had rendered its decision reversing the Interstate Commerce Commission and the lower court, and at the hearing in Atlanta before your Honor, during my cross-examination, Mr. Gutheim asked me if I ever heard of that particular method of determining the terminal and haulage expenses, and the record will show that I brought out these very figures that I am using now. [fol. 2193] Mr. Adair: The point is, you are proceeding

on the theory that Mr. Pettijohn testified in this proceeding and I want to call your attention to the fact that such is not a fact and the record shows it.

A. I think that is conceded. The only mis-statement made is that Mr. Pettijohn testified before the Master. Now, if you take the out-of-pocket expenses of line #1, the corrected figures of $2,398.55, and divide that by 27.09 percent and multiply by 100, line #3 becomes $8,854.01, and again for the moment accepting the terminal and switching expenses of $315.30, the total operating expenses would be $9,169.31. Now, we divide that figure by 62.41 percent, and the revenue necessary to produce a 5.¾ percent return would become $14,692.16 and deducting from that figure the $10,135.20, as estimated revenue, it would leave a deficit of $4,256.96. In my opinion, this conclusively shows and demonstrates the erroneous application made by Mr. Saunders, and that properly applied, the results show beyond a doubt as was found by the Interstate Commerce Commission and by this Court, that the Cummer scale was inremunerative.

Exhibit 72 A is a rather hodge-podge exhibit, developed from many sources, and the only correct figures on the Exhibit being line #1, "Reported out-of-pocket costs, $2,398.55." The remainder of the Exhibit is based on various trackage agreements, some not finally consummated, reciprocal emergency rental of locomotives, based on what one carrier would charge another for like service, and are not representative of actual cost to the Atlantic Coast Line Railroad Company for performing transportation service. As I recall the testimony of Mr. McPherson, he testified that he could have made such an agreement with the Seaboard Air Line and G. S. & F. but he did not make it, and car repairs purported to be what the lumber company paid, which of course would not include any owner's repairs, which would be borne by the carrier. [fol. 2194] The record, with respect to running repairs to locomotives, Mr. Saunders has arbitrarily applied 30 percent of the system rate for locomotive repairs, as stated on page 279 of the record:

"All I attempted to cover here is the light repairs such as putting in new brakes and fixing the air hoses and the like, that gave $145.58."

The running repairs per locomotive mile in Florida are relatively greater than repairs for the system, due to the shorter runs per day for locomotives, more round-houses and mechanics. Because of these short runs, repairs are spread over a shorter mileage per day for the locomotives and create higher relative cost per locomotive mile, and particularly the mechanical expense and overhead expense are greater per locomotive mile in Florida than on the system, where the average haul is longer than in Florida. From statistics prepared for Florida as compared with the system, in my opinion the rates should be almost doubled. Now, in November, 1930, the running repairs for locomotives were for Florida 9.88 and for the system 8.81. Now, the total repairs were 16.3, so that the running repairs then for the system constituted a larger percentage, over 50% of the system cost. Here Mr. Saunders has only used 30. Of course, the out-of-pocket expenses, plus the assumed charge of 6 mills per car-mile, does not cover all of the operating expenses. There are no general overhead expenses, bill expenses, for handling log traffic, accounting expenses for handling accounts, etc., or agency expenses; and in passing I might say that during the period that these trains were operated, Hines to Palatka, it was necessary to have a Special Agent operating at Hines to protect those trains, to obtain clearance for the operation of the line. None of these expenses are embraced in Mr. Saunders' figures, and in my figures, they [fol. 2195] are materially understated. Mr. Dewey yesterday testified with respect to the 6 mills and it is not necessary for me to make any further comments on that feature of it. As to car repairs, Mr. Saunders stated that the actual cost to the lumber company was $470.16. I find from an analysis of the bills against the Lumber Company for material furnished, that practically all of the repairs made by it were in replacement of floors of cars and equipment damaged due to rough handling in loading logs while the cars were in their possession. The switching cost of 30 cents per car is purely an arbitrary figure, and does not give any consideration to the facilities used at Palatka by the switching crew, and to the idle time of the switching crew and the expenses of making up the cuts of these cars to be handled to Hines. That service is performed by the switching crew at Palatka. The operating has been previously explained on certain cars, that the road engine

would place this cut, we will say for illustrative purposes, of 40 cars at Palatka, at a time convenient to both the Lumber Company and the railroad, more largely to the Lumber Company is my information, and the switching crew would cut that train and pull a cut of 20 cars to the mill, returning with the empties that were then available, and later in the day switching the remaining cars and put on the remaining empties, and then it made up that train until ready to be hauled to Hines again. I am unable to state how much time it took to do that. I have not the definite figures. Certainly, in considering the cost at Palatka, some consideration should be given to the other facilities used. Thirty cents per car does not cover it. As I understand from Mr. Saunders' testimony, he took $12.00 and divided it by forty cars and got his thirty cents. I just said a minute ago that I was not able to state the correct figures, but I say that thirty cents understates it, because maintenance of the yard and other tracks in the Palatka yard that are used by the switching engine in [fol. 2196] hauling the cars out of the mill, and in placing them ready for return movement to Hines, and the yard clerk, who keeps the record of these cars, and other expenses in the treatment, should be apportionately charged. I am unable to state the exact figures.

Exhibit 73-A is also based on rather miscellaneous information from various sources, and it does not represent the transportation cost to the Atlantic Coast Line Railroad for performing common carrier service between Hines and Palatka. The comments made with respect to Exhibit 72-A, apply generally to 73-A. In addition, Mr. Dewey referred to the locomotives being assigned for 25 trains and as I understand his testimony, those locomotives were put in there for the entire period, and were consigned to this service, and it was his view that the thirty days should be charged. Expenses for this service and other items that I have referred to with respect to Exhibit 72-A are included (Page 823-B of Tes.) and this exhibit has all of the imperfections of the other. This is calculated based on 8 hours per day. The testimony probably does show that it didn't take even 8 hours to make that trip, but as Mr. Sibley testified this morning, you had to pay for 9 hours and 31 minutes whether it took them 2 hours or 8 hours. It seems that Exhibit 73-A is a rather peculiar exhibit, because it is admitted by Mr.

Saunders that no provision is made for the handling of empties which must necessarily be placed by the locomotive before the movement of the loaded cars could be effected. Giving consideration to this one element alone, the cost per car of $9.71 immediately becomes $19.42, which is in excess of the revenue under the Cummer scale, without giving consideration to any other imperfections in the exhibit. Mr. Dewey specifically referred to rental of cars at $1.00 per day and the 125 cars assigned to this service. I think consideration should be given to that testimony.

[fol. 2197] Mr. Adair: Then Exhibits 72-A, 73-A and 75-A for the purpose of argument, your figures as to the ratio of out-of-pocket expenses were accepted, were they not? That is actual wages and actual everything?

A. The actual wages that I reported; I am willing to accept those.

Q. I say, they were accepted in 72-A, 73-A and 75-A about which you have just testified?

A. Yes, sir, but the other figures are wrong in the exhibits. My figures were accepted in 72-A and on 73-A they were accepted in line 2 with certain percentages, and on line 2, 75-A, the same thing. The figures on line 2 of 75-A are brought forward from 73-A, line 2.

Direct examination continued:

Of course, the repairs to the cars as represented, in my opinion materially understate the actual cost. The same criticism previously made with respect to same, applies in this case and all other criticism which I made in connection with Exhibits 72-A and 73-A are likewise applicable. That is, such as accounting expenses, general expenses and other items that should properly be included. Now, as I have pointed out and as admitted by Mr. Saunders, if Exhibit 70-A falls, the other exhibits dependent upon it likewise fall. Exhibit 75-A shows the movement of trains from Hines to Palatka and it leaves the train at Palatka. The peculiar feature of it is that in moving this train (Page 825-B of Tes.) it would only represent the movement after the empty cars had been placed. You have to first place your empties before you can load any and this represents the movement in one direction only and

it — not at all representative. I would say that this exhibit can be of no importance in estimating anything about [fol. 2198] this case. It has no value whatever that I can see. This exhibit shows just a one-way movement and it is impossible to carry on this business from Hines to Palatka on a one-way movement. It does not account for hauling cars back and forth. Mr. Saunders creates the impossibility of moving loaded cars before the empties are placed.

Mr. Adair: That is taking this reciprocal agreement between the railroads and showing what would happen if the Atlantic Coast Line Railroad moved a train 119 miles, say from Jacksonville to Savannah, because there was a washout on the road and under the circumstances of that sort there would not be any return movement over the Atlantic Coast Line Railroad.

(Witness continuing:)

It would have been absolutely impossible to have conducted these movements from Hines to Palatka and Palatka to Hines on any basis of emergency such as Mr. Adair has just stated. The cost of moving these empty cars back to Hines for re-loading would be the same identical cost, because that was a 100% empty return movement.

Court: There is some testimony that some of these cars went back with some freight.

A. Well, it was an infinitesimal amount. As I recall Mr. Saunders' testimony, it was 98 to 100% empty. It would be substantially 100%. It is rare that any of these cars are ever utilized for any return freight.

Court: Have you any information that would permit you to testify as to what would be the proper cost for moving these empty cars back after deducting estimated amount for freight that could be handled back in some of them?

[fol. 2199] A. Well, it would make one cent difference in the cost per car for the infinitesimal amount of that freight that was handled for this reason: in determining the cost per gross ton mile, you consider not only the tare weight of the car, but the contents on record in the car. I am going to file an Exhibit right now that will perhaps clarify that for

you. No one has been able to work the cost down and we have not attempted in any way to work the cost down to a single train. We have taken the month of November, 1931, and absolutely assigned the expenses, those out-of-pocket expenses, to that train for the entire movement for that month, and contrast it with the actual movement for that month, the 25 trips made. Now, in that way, we get into these costs the average cost per gross ton-mile for handling the empties one way, and the loads in the opposite direction. They are merged together to get the cost per gross ton-mile so the figures when you reduce it to gross mile-ton, cost, to reflect the handling of the empties in one direction and the loads in the opposite direction, so there can be no question as to whether it is a 100% run, because the costs have been based on the actual movement of those trains. That is, the ton-miles above used in those trains were used in determining the gross per ton-mile cost.

Now, in Exhibit 76A, it was previously pointed out that it was based on the cost shown on 70A. Now the figures of 76A, line 9, out-of-pocket expenses for gross ton-miles, are shown directly under letter "B" as .043002. As I pointed out in Exhibit 70A, that the figures used by Mr. Saunders are absolutely wrong, and the correct figures as I gave them for 70A, the cost per thousand ton-miles, gross, was 62.083 cents, or staying in line with what Mr. Saunders' Exhibit, line 9, shows, would be .062083.

As illustrating the effect of the correction, I will now file as Exhibit 9B, a reproduction of Mr. Saunders' Ex- [fol. 2200] hibit 76A showing the results as worked out by Mr. Saunders, and under the heading "As Revised" under both Columns A and B, the correct figures shall show that the revenue under the so-called Cummer scale was $19.96, expenses of running, hauling expenses, and taxes and return on investment was $27.18. When you take in all expenses as shown by Column B, the cost will be $36.90, compared with $26.40 of Mr. Saunders in Column B, and the $27.18 is compared with $19.44 as shown by Mr. Saunders. Mr. Saunders' figures down to the first 8 lines in Exhibit 76A, are the same as mine, and then after that under column A, let me explain that—I think I can make it clear. You will note under the Letter B, under the word Saunders, the figures read .043002, and as revised, .062083. Now, those figures represent out-of-pocket expenses per gross

ton-mile. Then on line 10, you will note that Mr. Saunders shows .165 with a letter *a* following. If you will note at the bottom, *a* means Item 10A equals 25.9192% of Total Freight Hauling Expenses. Therefore, the figures .043002, as used by Mr. Saunders, were divided by 25.9192, to produce the total hauling expenses of .166, and likewise, the figure .043002 was divided by "B" which is 19.0606%, and multiplied by 100, to get the total cost as shown by Mr. Saunders of .2255. I followed the same process, and changed the figures in Column A to .240 for .166, and in Column B to .2357 instead of .2255. The column "As Revised" means I substituted the correct figures of .062083 out-of-pocket expenses per gross ton mile for the figures of Mr. Saunders of .043002.

(The exhibit thus identified by the witness was offered as Defendant's Exhibit 9B.)

(Objection by Mr. Adair that the exhibit is immaterial, irrelevant and incompetent.)

[fol. 2201] Now, Exhibit 77A, filed by Mr. Saunders, is a statement showing consist of log trains operated between Homosassa and Lacoochee, Florida. At pages 303 and 304 of the record, Mr. Saunders testified that Exhibit 77A is not a representative movement of the logs in Florida between Homosassa and Lacoochee, and pointed out that 54 cars of other logs and 72 empties seem a large proportion. The exhibit also shows 17 loaded cars in other freight and 51 empties, including 10 cars of company material and camp cars. I should at this point explain why May, 1929, was used in getting up this information when you requested April. The reason is that the log trains, Homosassa to Lacoochee, did not begin operation until the 4th of April, and therefore April would not have been a full month, and I found out from the wheelage reports that May was representative. Now, apparently Mr. Saunders is not aware that trains handling logs from Homosassa to Lacoochee regularly handle logs Homosassa to Otter Creek. Here is Homosassa. (Looking at map.) The cars from Homosassa move up in a northeasterly direction (Page 830 B of Tes.), stopping at a junction just short of Dunnellon, at Gulf Junction, and then moves South, practically directly South to Trilby, and then almost directly East to Lacoochee. Now, these log trains regularly handle cars

that originate at Homosassa, destined to Otter Creek, which is up here. It is northwest of Gulf Junction. Now, the cars that come out of Homosassa, destined to Otter Creek, are set off at either Crystal River or Cutler. Now a check of the wheelage reports for the entire year of 1929, from April to December, 1929, inclusive, shows that these trains consistently handled cars from Homosassa destined to Otter Creek, which are set off at either Cutler or Crystal River, and would also pick up any other merchandise offered. So that at this point I think it is proper to bring out the fact that these are not strictly solid log trains in the sense that the Hines to Palatka movement is a solid log train, that [fol. 2202] is, that freight was included with the logs. You will find that there are other cars handled on the train in the Homosassa movement. This train handles other merchandise, and it does not handle all of the logs picked up in Homosassa the entire distance to Lacoochee. As I just pointed out to you, some of the logs are picked up there and dropped at Gulf Junction or Crystal River and moved Northward to Otter Creek. The same criticism of Mr. Saunders' adjustment in Exhibit 70A applies with equal force to Exhibit 77A. Mr. Saunders stated:

"But it should be borne in mind that the run is only 69 miles. It would be a poor railroad occupying full time."

This quotation indicates that Mr. Saunders was not informed with respect to the adjustment that he attempted to make.

I have previously pointed out that an engineer or conductor or train-man wages are based on 100-mile runs, 8 hours constituting a day, and that they are paid for that whether they make it in two or eight hours, and the adjustment as made by Mr. Saunders is incorrect. The very fact that paying for 100 miles for a 69 mile run is one of the features, your Honor, that created added costs in handling this particular traffic, and particularly in Florida, where it is a short haul. Now, you have, as Mr. Saunders stated, only 33 cars per trip handled in this service. Now, this locomotive could handle substantially more than 33 cars, but the traffic is not offered in this particular service, and that is one of the elements which create the higher cost per unit for wages than the other elements in this particular line

of service as compared with the main line of long haul. The density of traffic is an important factor. At pages 303-304 of the record, Mr. Saunders stated:

"The cost was particularly higher because it contained an element of cost that was representative of full train load movement. For instance, the trains were only 33 cars average."

[fol. 2203] Mr. Saunders was overlooking the fact that the movement between Homosassa and Lacoochee contemplated only 25 cars every other day, and that the cost of handling a train consisting of only 25 cars of logs would be much greater than a train consisting of more cars with other freight. Now, let us illustrate it in this way—take this Exhibit 77A and divide the out-of-pocket expenses of $1,682.41 by the total gross ton miles of $1,763,654, covering all freight, that is, logs and all other freight, to which Mr. Saunders takes exception, and you obtain a gross per ton-mile of .095394 cents, but if instead you use only the 1,655,798 gross ton-miles created by the log traffic, your cost would be 1.01607 cents, which is 106.52 percent of the cost per gross ton-mile when the gross ton-miles made by the other freight is included. That just illustrates, your Honor, the effect of low density of traffic in Florida, and this is very conclusively illustrated, it seems to me, in this particular exhibit, and my criticism of Mr. Saunders' comments. In this particular log movement, if you confine your cost for handling that in a solid train load of 25 cars, as illustrated by me, the cost would be 106.52 percent of what the cost was where other freight was included. Instead of being a burden, as indicated by Mr. Saunders in his testimony on pages 303, 304 of the record, the log companies got the benefit of this other traffic. The cost excluding that other traffic, would be 106.52 percent. Mr. Saunders gave credit for the revenue that arose from it to the freight. In the subsequent exhibit, he gives credit for it all through. I previously stated that in every month of the year 1929, these trains included cars other than logs, and had other commodities in it. This merely emphasizes the fact that while the movement consisted of 25 cars, generally speaking, between Homosassa and Lacoochee, it was not a solid train load of logs. At page 333 of the record, Mr. Saunders stated:

"There is more ton per mile in Florida than on the balance of the System."

[fol. 2204] The element of density of traffic is not measured by the number of tons of freight, but by the number of ton-miles per mile of road, and it has been clearly shown in this record that in the year 1930 the ton miles in Florida were 369,979, while for the System, excluding Florida, they were 648,399. This indicates that the ton miles per mile of road in Florida were only 57.06 percent of the System ton-miles. This is one of the elements creating the higher cost in the State of Florida as compared with the balance of the system, because of the short haul in that State compared with the System, excluding Florida.

This was admitted by Mr. Saunders at page 334 of the record. Take the line, Homosassa to Dunnellon, the ton-miles per mile of road for 1931 were 143,000; from Trilby to Lacoochee only 30,000 ton miles, indicating the light traffic density on these particular parts of the line.

Now, Exhibit 78A is another one of these figures of many words, and I hardly know how to describe it, but it is a statement of cost made up on the various reciprocal emergency charges which I have previously testified and the same criticism applies with respect to this exhibit as to the similar exhibits which I have heretofore commented on. The expenses Mr. Saunders produces are merely the minimum cost obtained from disconnected agreements between various parties, some of which were never consummated. Mr. McPherson testified that he could have made an agreement with the Seaboard Air Line and the G. S. & F., but I think the record states he did not make that agreement.

The total revenue of $10,093.25 is excessive, as the actual revenue for the movement of this train was only $9,623.20, but as the foundation of the exhibit is unsound for items 2 to 6, the final cost per car is valueless.

[fol. 2205] In addition to all of the infirmities pointed out in connection with the Exhibits 72A and 73A, which apply also to Exhibit 78A, Mr. Saunders on line 3, drops his rental for locomotives from $43.69 to $33.70, while as a matter of fact, the very same engines handled these trains that handled the Hines to Palatka trains in November, 1930. It is true that Mr. Adair gave me a telegram from the Cummer Cypress people and told me that their records were wholly different in the way of types of engines used in

that service and we both investigated it. I will state that my information is taken from the wheelage reports, and whether the Cummer people got their information from the foreman or someone else, I don't know. Until I am convinced to the contrary, my figures stand, as they are taken from the wheelage reports—my (page 835 B of Tes.) figures as to the number of the locomotives. Now on this line 3, rental of locomotives which Mr. Saunders shows as $33.70, it should be $43.69. I have previously explained and commented on the other items, so I do not believe it is necessary to elaborate on them. All of the previous criticism applies, but let me try to demonstrate these costs in another way. Exhibit 78A shows on line #1 the out-of-pocket expenses, $1,682.41. Now Mr. Saunders' Exhibit 78A, out-of-pocket expenses represent 25.9192 percent of the total haulage expenses. Now, let us divide the $1,682.41 by 25.9192 percent and multiply the resulting figures by 100, and we will produce as total mileage expenses $6,492.80, as shown on Exhibit 76 A, and taxes represent 15.3950 percent of the total operating expenses. Multiplying $6,492.80 by 15.3950 percent, we produce taxes of $999.57. The return on investment as shown on line 15, Saunders' Exhibit 76A, represents 32.97536 percent of operating expenses. Multiplying $6,492.80 by this figure, we arrive at a 5.¾ percent return on investment, $2,141.00, making a grand total of $9,633.37. As shown by Mr. Saunders' Exhibit 78A, as corrected by me, the actual [fol. 2206] revenue for this month for these trains was $9,623.20, leaving a deficit under the I. C. C. scale of $10.17. The Cummer scale revenue produced $5,003.75, which will show a deficit of $4,169.58. I use the figure 25.9192. That figure was taken from my exhibit filed in this hearing, in the previous hearing, and it is used on Mr. Saunders' Exhibit 76A. I have checked the mechanical calculations made on Exhibit 79A by Mr. Saunders, and while a number of errors were detected, so far as the first 7 columns are concerned, the results are substantially correct mechanically. I may point out a typographical error for Account 218, "Ballast-other" under Column 3, for 1930, which reads $233,001.34. This should be $333,001.34. The total is not affected by that. Mr. Saunders used the correct figures in his computations and the total is not affected. Column 8 of Exhibit 79A, "Total Florida Line-haul Expenses," is derived from the application of the formula or basis of

apportionment shown by Mr. Saunders' Exhibit 80A. I should, therefore, like to call attention to some errors in Exhibit 80A, which of course, destroy the figures shown in Column 8 on Exhibit 79A. Mr. Saunders has made numerous erroneous assumptions in his application, as a result of which he has produced operating expenses assignable to Florida far below what the actual expenses really are. The first major error is in applying to Florida unit cost of the System, or traffic units of the System as compared with Florida. I am dealing with his formula on Exhibit 80A, but no specific line. 80A should have been numbered 79A, because Exhibit 80A is the basis of arriving at the results of 79A. If 80A had gone in first, we would have explained the basis and applied it, and produced the result of 79A. For example, Mr. Saunders assumes that it cost no more per ton or per ton-mile in Florida than on the balance of the System. This has been repeatedly shown to be erroneous, because I have previously testified that the cost per freight car-mile, loaded and empty, on the [fol. 2207] Third Division was 171.96 percent of the cost per freight car-mile on the First and Second Divisions. The cost per thousand gross ton-miles on the Third Division was 165.76 percent of the cost per thousand gross ton-miles on the First and Second Divisions.

I have likewise shown that the pounds of coal consumed per thousand gross ton-miles on the Third Division for 1931 were 149.75 percent of the First Division and 150.50 percent of the Second Division. As all of these tests indicate the greater cost per unit in the State of Florida, than for the balance of the System, Mr. Saunders' method erroneously assumes an equality of cost in Florida as compared with the rest of the System, and that is what Mr. Saunders has done by giving equal weight to a ton-mile or car-mile in Florida as compared with the like unit for the System. Mr. Saunders' second major error was in applying the figures to the branch line, Hines to Palatka, the inclusion of a large volume of traffic not passing over that line, and third, there is much more branch line mileage, relatively, in Florida than on the balance of the System. Perhaps I ought to explain that a little, as it may be a little confusing. When I speak of that line, Mr. Saunders uses this expression in bringing that into the log traffic, and it assumes the same costs on other log traffic, too. Now, Mr. Saunders overlooked the fact that Florida and the Third Division

particularly, which is exclusively in Florida, constitutes the southernmost section of the Atlantic Coast Line Railroad System. That is, as has been shown, it is on the peninsula at the southeast section of the country. All of the material used in railroad operations, such as the major articles, rails, steel and coal, all come from the northern section of the country, and must be handled by the balance of the System for long distances before it reaches the Florida State line. Now, all of these expenses are borne [fol. 2208] by the System north of the Florida line, in that case, and not by Florida. So no consideration was given by Mr. Saunders in his apportionment of these expenses for these elements which all contribute to the higher cost in Florida than the balance of the System. In other words, if you were making adjustment of operation expenses, and assign operating expenses directly to a State, you would charge that State for the costs to the other parts of the System for the handling of Company material, and would give credit to the states north for their expenses, and charge it against the state where no compensating service was performed, as in the case of Florida. Florida being, as I previously stated, in the Southeast portion of the System, does not perform like service for the balance of the System.

Mr. Willoughby has testified at some length as to the fallacies used by Mr. Saunders in this Exhibit. It is absurd to use the percentages of costs of reproduction new as of June 30, 1917, for the apportionment of expenses of 1929, 1930, and 1931. Since as late as 1922 there has been actually expended in Florida approximately thirty-two millions of dollars, or a 50 percent increase in the investment in road and equipment, 1931 over 1922. Therefore, these percentages are all valueless and it necessarily follows that the application of these percentages to the expenses of the average year 1929-1931 produced erroneous results. As a matter of fact, some of these percentages would be increased over 100 percent.

There is no relation between the cost of reproduction and the cost of maintaining bridges, trestles and culverts, because north of Florida practically all of our larger bridges crossing rivers and swamps are constructed of steel and concrete, which require little or no maintenance, as compared with the wooden structures in Florida, which are more expensive to maintain. Mr. Saunders has also [fol. 2209] been inconsistent in the method of applying the

percentages. For example, on his Exhibit 79A, he took the weighted average operating expenses for 3 years, 1929, 1930 and 1931, and then applied the traffic units of 1930. For these and other reasons, therefore, in my opinion, Mr. Saunders' Exhibit 79A is absolutely without value and as the apportionment (Page 840 B of Tes.) shown in column 8 as total Florida line-haul expenses is vastly understated, every subsequent exhibit based on Exhibit 79A necessarily perpetuates the same error and understatement of expenses. I base my statement that it is vastly understated on the two elements pointed out by Mr. Willoughby, and the only official figures were those of 1917 adopted by the Federal Government. I didn't say that all of the items were in error to the extent of 100%, but I say some of them. Practically every account on the exhibit carries as a basis of apportionment, either tons, train-miles, car-miles or ton-miles, which, as I have just testified, was more per unit in Florida than on the balance of the System, and the same error applies throughout for every account where those percentages have been used, and as I have indicated, the cost per freight car-mile, loaded and empty, on the Third Division, was 171.86 percent of the cost per freight car-mile on the First and Second Divisions. I could illustrate the principle: if it costs 171 percent more per car-mile, one way of equating that would be to take your Florida car-miles and multiply them by 171 percent, because each car-mile in Florida with relation to the cost per car-mile is 171 percent greater than the other part of the System. That would increase his percentages. Frankly, I am assuming that for illustrative purposes. It would not be absolutely correct. I am using that to illustrate. You would not have to do that on the accounts. If it cost 171 percent more in Florida to create one car mile, then if your car-miles is the [fol. 2210] unit that you are assigning expenses to Florida, you ought to surcharge expenses in Florida by that cost. That is just a current explanation. So far as the operation of the road and transportation service is concerned, the greater amount of wood burned in Virginia and North Carolina would not make a substantial difference. It might be necessary to burn more fuel in Virginia in the northern part of the line to increase the temperature in buildings and housing employees, but it would not necessarily increase the consumption of fuel for locomotives.

I deem it unnecessary to make a complete analysis of Exhibit 81A because the figures in Column 6, "Final Expenses Assignable to Log Traffic" are based on Exhibit 79A, and all of the errors reflected in 79A are perpetuated in Exhibit 81A. In Exhibit 81A, attention is called to Column 7, as to the basis used in assigning certain expenses. These are all more or less arbitrary. For example, for "Traffic Expenses" he has arbitrarily allowed 10 percent of all accounts. Now, for accounts 392 to 402, as shown opposite line 4, "Transportation," final expense on basis of test cost is .013783 per car-mile, as brought forward from Exhibit 70A. As the correct figure per car-mile on Exhibit 70A should be .0198996, a substantial increase would be obtained in this figure. For certain other items, an arbitrary percentage of 50 per cent was applied for the nature of the traffic. These percentages are not necessarily correct, and are not supported by fact. The further assumption that the total expenses assigned to local traffic is properly made on a ton-mile basis.

Now, Exhibit 82A, in addition to the figures shown on line 1, "Operating Expenses for Line-haul Log Traffic in Florida, $102,046.00," being in error, reflects all the accumulation of errors on Exhibit 79A, and line #2 shows "Terminal and Switching Expenses, $21,412.00 Loaded and Empty Cars," being 2 switching services for 10,706 cars, [fol. 2211] Mr. Saunders assumes the thirty cents per car would be representative of the cost of switching of log traffic. I, this morning, pointed out some criticism of these figures, and further, his cost of thirty cents was based on the Palatka switching performances. Now, every single car of log shipment requires all of the complete switching expenses that are applicable to all other traffic, and thirty cents per car is not at all representative. I mean by that, if you are handling a single car-load of logs, you have to put it on the train, and when you get it to the terminal, you have to back it out of the train and classify it, and put it onto other trains wherever it may go, and it carries all of the terminal expenses that any other single car-load shipment would carry, or substantially the same. It is possibly true that those single car expenses would not be as much in train-load lots as if shipped in single car-load lots so far as the switching is concerned. That would

wholly depend upon the location in which the traffic was handled. That would not constitute a big item from Hines to Palatka. The cost per car for switching, generally speaking, is rather substantial. According to my idea there would be less expenses in switching train-loads than in switching single car-loads. Now, in this expense, no switching has been included at Hines for example, because no yard or terminal is maintained there. Practically all of the switching being done by the road engine, and in that case there would be no specific switching charge, but you take at another point where a single car-load is handled, it requires just as much classification. If you pick up that car in a single lot and you handle it to the next junction point or yard, and it may be classified just as any single car lot of merchandise would be. Now, on line #3, Mr. Saunders shows total operating expenses of $108,470.00, [fol. 2212] and he raises that by dividing by 76.76 percent and multiplying by 100 and produces line 4 of $141,310.00. If we used 62.41 percent ratio that I explained this morning to produce a 5.¾ return, we would increase line 4 to $173,802.00 or show a deficit under the Cummer scale of $34,108.00, and this of course is without correcting all of the errors that I have pointed out in connection with Exhibit 79A, Exhibit 81A. Mr. Saunders, in Exhibit 83A, shows the commodities by general groups, and on page 320 of the record, Mr. Saunders commented on the fact that in Florida products of mines constituted 49.5 percent of the total in 1930, while for the system they represented 34.7 percent; and that Manufactures and Miscellaneous for the system were 25 percent as against 18.2 in Florida. Now, the products of mines, consisting of phosphate rock and stone in 1930 represented 30.44 of the total tonnage, and stone, broken and crushed, represented 13.73 percent of the total of 44.17 percent of the 49.24 percent of the total products of Mines. No part of this tonnage of phosphate rock and very little, if any, stone passes over the line Hines to Palatka, but the phosphate rock comes from the Winston and Bone Valley Phosphate districts, located near Tampa, and moves to Port Tampa. So when you consider this log traffic and everything, and this represents 50 percent of the total traffic, it must be borne in mind that that traffic does not pass over the line where the log traffic under investigation is passing, but the phopshate rock, which constitutes

34.44 percent of the traffic is southwest of this section and moves to Tampa. The products of agriculture for the System are 15.1 (Page 845 B of Tes.) percent, and for Florida 14.1 percent. If it were not for the perishables handled on the Atlantic Coast Line Railroad System for the longer distances outside of Florida, the Atlantic Coast Line Railroad would be in a hard way to exist. In 1930, products of agriculture constituted 14.18 percent of the ton-[fol. 2213] nage and produced 34.98 percent of the revenue. While products of forest represented 23.65 percent of the tonnage and produced only 13.34 percent of the revenue. I say that agricultural products produced 34.98 percent of the revenue while it constituted only 14.18 percent of the tonnage. Logs are products of forests and as indicated above, products of forest for the System represented 23.65 percent of the tonnage, but produced only 13.44 percent of the revenue. The second answer at the top of page 270 of the record reads as follows:

"The total out-of-pocket cost would be $2,116.38. That represents 1.76 per car mile, or .548 cents per gross ton-mile. This figure that I have just read may be construed with the corresponding system cost in which the out-of-pocket expenses for the system was $6,180,383.19 for 1930. The car miles was 306,314.24, or this was 10,341,858 gross ton miles. If you reduce it to a unit, the system out-of-pocket cost would be 2.02 per car mile, or .598 per thousand gross ton miles. The purpose of this comparison was to show where we had an actual cost of log movement, it was much less than the system costs which have been used for comparable purposes."

Of course, Mr. Saunders' testimony was based on the erroneous figures which he produced in Exhibit 70-A. When you work out the proper cost, it shows that while for the logs the out-of-pocket expenses or cost are per thousand gross ton-miles 62.08 cents the thousand per gross ton-miles for the system cost as shown by Mr. Saunders was only 59.80 cents, the cost for logs being greater than for the system, or in other words, was 104 per cent of the system cost per gross ton-mile.

With reference to the consumption of fuel, regarding which Mr. Saunders stated that the Atlantic Coast Line reported in 1930 that they used 109 pounds of coal per

thousand gross ton-miles for the entire system, including the locomotives in the calculations of gross ton-miles, and then by eliminating locomotive ton-miles by his own calculation, makes them 123 pounds per thousand gross ton-miles the Atlantic Coast Line Railroad used on an average [fol. 2214] in the year 1930. He further states that this figure is reasonable, comparing same with 122 pounds per thousand gross ton-miles for the entire Southern district.

At page 272, Mr. Saunders, with reference to the 122 pounds for the entire Southern district, states that he "got it from the annual report of the I. C. C." It will be noted that this is not the annual report of the Atlantic Coast Line Railroad Company to the I. C. C. and is not of record. I now understand that this report has been placed in the record.

At page 273, Mr. Saunders states that on the Hines to Palatka movement, the 291 tons used during the month of November averaged 151 pounds per thousand gross ton-miles, and "this was under the system average." As a matter of fact, the reverse is true, for from his own figures he shows that 151 pounds were used in the Hines to Palatka movement against 121 pounds for the system, which indicates that the cost per thousand gross ton-miles for the Hines to Palatka movement is approximately 125 per cent greater than the System for fuel alone.

Now, I have previously read into the record the consumption of fuel for each of the Divisions, the First, Second and Third, and for the System, so I will not repeat that. At page 27, Mr. Saunders' testimony reads:

"In line 4 I have shown terminal and switching expenses on the basis of 1,051 loaded and empty cars at $.30 per car as shown by Lamb's Exhibit."

While his statement is later qualified, it should be distinctly understood that Lamb's Exhibit did not show any cost of 30 cents per car. Of course, I have commented on the 30 cents, so it is not necessary again.

In connection with Exhibit 73-A, at page 287, Mr. Saunders testified:

"You could take a train at Hines provided that connecting railroad was a party to the agreement."

[fol. 2215] This shows that it would be necessary to be a party to the agreement before you consider any of the figures used by Mr. Saunders, and the figures are not comparable with railroad transportation service. At page 308 of the record, Mr. Saunders stated:

"After reducing it to the unit cost basis and unit cost line-haul per revenue ton, system, was 1.1695."

Q. For Florida?

A. It was .7010. The one just read was the unit line-haul cost per revenue ton."

At page 309 on redirect examination by Mr. Adair, Mr. Saunders stated:

"The average haul for the A. C. L. System in 1930 was 170 miles. That was on freight. The average haul in Florida on freight was 99 miles. That is a big factor that enters into the unit costs."

From the above quoted testimony, I understand Mr. Saunders has indicated that the cost on the system was greater than the cost in Florida. Mr. Saunders has made a fundamental error in principle, in that he has divided the haulage expense by the number of tons. This is absolutely wrong, as haulage expenses represent the expenses created by distance, and, therefore, in arriving at the cost per unit the ton-miles should be used. Let us take Mr. Saunders' own figures and testimony, and as stated by him, assuming the average cost per ton for the system haulage expenses to be 1.1695 cents, and dividing that figure by 171 miles (average haul testified to by Mr. Saunders) the cost per ton-mile would be .6839 cents. He gives as the cost per ton in Florida .7010 cents and stated that the average haul in Florida was 99 miles. Therefore, the cost per ton-mile would be .708 cents, as compared with the system cost of .6839 cents, the Florida cost being 103.5 per cent of the system cost. On page 333 of the testimony, the question was asked Mr. Saunders:

"You don't mean that the per ton-mile in Florida is equal to ton-mile for the System?

A. No, sir, I didn't say that. I said ton per mile. If you divide ton-miles by tons, you get miles."

[fol. 2216] He said "you get tons", but it should be miles.

Mr. Saunders' testimony continued:

"Q. Now, in 1930, the Commission found that the system had 556,771 ton miles, and that Florida had 648,399, is that right?

A. I am not disagreeing with those figures. They are not the ones I used. We are talking about the car mile here. You have been reading ton miles?

Q. Yes.

A. I don't know whether I used those or not. I have used figures like those in my exhibit, I reckon.

Q. Don't you know that the main traffic in Florida is less dense?

A. Yes.

Q. In Florida than on the other parts of the system?

A. Yes, in ton miles it might be."

Now, as I have just quoted the testimony of Mr. Saunders, he stated that the average haul in Florida was 99 miles and that is a big factor that enters into the unit cost. The short haul in the State of Florida is one of the elements creating the higher unit cost than on the balance of the system. I may perhaps make this a little clearer to your Honor, for the use of this Homosassa to Lacoochee movement which was the 69 mile distance—the distance of the haul, and as Mr. Sibley testified they had to pay for the 100 mile haul, 100 miles for that 69 miles, and as a result of that short haul taken in expenses, any overhead expenses are distributed over a shorter haulage or shorter mileage, and it makes the cost per mile greater than where you could save it over 171 miles, for instance, the average haul for the system. (Page 851-B of Tes.) The average haul is 171 miles but it does not necessarily follow that the average train crew hauls freight 171 miles over the system. I was using it in relation to the average haul on the system.

Now there is just one thing at page 322 of the record. I called Mr. Saunders' attention to several figures that he had testified to and told him that I had tried in every way to check them but it was impossible to verify them, and [fol. 2217] Mr. Saunders agreed to check them and give me the figures to correct them. Now, on page 322 he rates the out-of-pocket expenses "which are trainmen, wages, fuel cost and supply cost represents .415 of the total sys-

tem out-of-pocket expenses." The average for all other accounts is .5858%. Now, Mr. Saunders found that he had used the wrong figures and wherever the .415% appears in the record, and you will find it several times later on the next page, it should be .373% and wherever .788% appears, as originally testified to by Mr. Saunders, it should be .558%. Those figures will appear in several places in the record and in correcting the record with Mr. Saunders this morning, we changed the figures to the correct figures.

Cross-examination.

By Mr. Adair:

In my Exhibit 9B, I have two columns. One has revised, then total cost, then column A, and then Column B as revised, and in line 16 I have as revised by me a total cost including return on investment $27.18. In that same line 16 as revised by me, in that column I have the total cost of $36.90. This $27.18 does not mean the total cost of transporting cars of logs from Hines to Palatka. The $36.90 on the basis of this computation would reflect the approximate cost of transporting logs from Hines to Palatka. I think this is the same computation that I have had throughout my column A and column B in this proceeding. Yes, from the beginning of this proceeding I have declared that the figure derived by divjding the out-of-pocket expenses on the one hand by .251912, and on the other hand by dividing by .190606, represented two points and between them lay the cost of transporting logs. I said that there were certain expenses in column B which were impossible for me to separate that might not in that entry be applicable to [fol. 2218] the log traffic and to that extent, perhaps it would probably be a little too high. I still entertain the same belief that they overstate the cost and that the actual cost would lie between the two figures. That it ought to be very close to column B. I have stated that it was somewhere between Column A and Column B and I certainly state that I believe it is more nearly to Column B than to Column A. Now, you understand in Column A on this Exhibit there are only the strictly haulage expenses. There is not a cent in it for any terminal expenses or for any accounting or any overhead or general expenses that

should be applied to this traffic, therefore I said that in Column B there were certain expenses that I couldn't eliminate that might be properly eliminated and that therefore Column B over-stated the cost, while Column A unquestionably understated it. Now my opinion is that it more nearly reflects the figures in Column B than in Column A. I did state that you couldn't tell what it was and I still say you cannot tell more precisely where it is, but I still believe it is more nearly to Column B than to Column A. I have read the decision of the Interstate Commerce Commission in Docket 18364 entitled "The Georgia Public Service Commission against the Atlantic Coast Line Railroad Company," decided on July 5, 1932. The Commission states that the cost of handling a car from Hines to Palatka in the train-load movement is $27.52 per car. I should think that the cost is greater; a trifle less than $36.90 per car. (Page 855 B of Tes.)

Q. Now, Mr. Lamb, in that item, that cost of $27.52 per car there is added the $6.10 per car as representing a proper share of interest on the investment at 5¾%. I want to ask you if you know and can say whether or not your company during the years 1929 or 1930 either or both, earned $6.10 per car or a proporation of that upon hauls of like distance or proportionate distance?

[fol. 2219] A. I don't know. I don't know what we earned per car. I have not worked it out. If it was 5¾% on investment, we didn't earn it. In 1930 we earned 2.37% return on investment for the System and in Florida we earned 1.17%. In 1926, we earned 4.20% for the System, and 2.43% for Florida.

Q. Now, in your computations here you have included 5¾% return upon each car transported in the Hines to Palatka trainload movement in order to ascertain what your car costs and what the Interstate Commerce Commission car costs. Why do you entertain the view that you should be entitled to burden the log traffic with a larger percentage of profit than was earned on your whole business for that year?

A. I am not attempting to burden the log traffic any more than any other traffic. My position is that we are entitled to 5¾% return on investment. The transportation account allowed the carrier 5¾% as a reasonable return. That

is what I claim and if you are considering the value of the service we ought to be able to receive at least 5¾% and I think the Supreme Court has said when property is efficiently managed it might earn in excess of that. It didn't say the railroad—it said others might do that. Irrespective of the fact that our Florida and our System earnings were substantially less than 5¾% upon traffic generally, I certainly do consider that the cost of handling the log traffic should include the 5¾%, or as the Interstate Commerce Commission has it here, $6.10 per car on this trainload movement. Regardless of the amount when multiplied by the number of cars, I still maintain we are entitled to 5¾%. Whether we are making it on anything else has nothing to do with what we are entitled to receive. I said that we earned two and a fraction percent in 1930. That was on the entire System. That is merely the return on investment. In other words, that is taking [fol. 2220] our net railway operating income and dividing it by the proper investment. You will find it shown on my Exhibit.

Court: I don't exactly understand what that two and a fraction percent earnings were—whether it was net income on the whole system.

A. Let me explain it to you. In 1930, as shown by my Exhibit 1 on file in this case, we had a property investment of $305,977,599.00. We had a net railway operating income for that year of $7,241,304.00. Now, that $7,241,304.00 represented a 2.37% of our property. A return of 2.37% on our property. We were entitled to 5¾% but we didn't earn it and all that we actually earned was 2.37%. We lacked a little over 3% of earning what we were entitled to under the Act. That does not mean that we have paid interest on any property indebtedness or funded indebtedness. That does not represent net income after bearing all fixed charges and operating expenses that would go to stockholders. Interest on funded debt is a fixed charge. For that year the interest on funded debt of $6,743,155.50 and interest on unfunded debt of $52,709.47 should be deducted. That does not have anything to do with matters such as guarantee of rentals for Georgia Railroad and for the A., B. & C. stock.

Court: How does that compare with your net income in dollars?

A. I can give you those figures in just a minute, your Honor.

Court: Never mind. You can get the map and give them to me Monday. Suppose you get them up and here is what I want to know. I want to know what, if anything, you would have left after paying all operating expenses and interest on bonds and unsecured debts, too. That is, whatever debts you might owe that would come under the head of fixed charges. I want to know if you would have anything left.

[fol. 2221] A. You must understand, your Honor, that in addition to the revenue receipts from freight rates, we have revenue dividends from investment, which are not affected by the rates and are not included. That is not figured in making return of investment. In other words, the net railway operating income shown here is what the Interstate Commerce Commission discusses as the net operating return.

Q. Ought you not to have the 5¾% after paying interest on bonds?

A. No, sir. That is what they call below the line.

Court: Well, just get that data up for Monday. I don't know whether it would be essential or material here so much, but what I had in mind was if the law doesn't permit you to make 5¾% after paying interest on these bonds.

A. It does permit you to earn it. I have not included the bond interest in these figures.

Cross-examination continued:

I testified in a fruit and vegetable case at Daytona Beach, Florida, September 1st to September 28th, 1932. That was before the Interstate Commerce Commission in Docket 3705 and 25071. (Page 860 B of Tes.)

Q. You then testified, I believe, that it was very much more efficient and very much more profitable to load and transport heavily loaded cars than it was to load and transport cars loaded only to the minimum quantity, did you not?

A. Generally speaking, that is true. It can be affected by the return movement.

[fol. 2222] Q. You then assumed, I believe, that you could haul coal at 14 cents per ton as against 28 cents per ton for tomatoes. Is that true?

A. I think you will find in there that that was merely used as an illustration and not as actual cost at all and I so qualified it. I was pointing out in this testimony the difference between the tonnage of coal and the tonnage of vegetables. It is, of course, a well known and established fact that generally speaking where a commodity loads heavy, and particularly in a case of equipment which may not require 100% return empty movement, it is more economical. Coal equipment isn't a 100% empty movement. They have a substantial empty return movement. I wouldn't say that the return empty movement is as much as log cars.

Q. In that connection, in comparing the cost of transporting coal and tomatoes, do you recall having testified as follows:

"Let us assume the engine capacity to be 4,000 gross tons on level tract operating at a most efficient speed. Take coal, for instance, and assuming 50 gross tons loading and 20 tons tare weight, the gross weight of 70 tons per car, or with a total rating of 4000 gross tons, in round figures 50 cars in a train, producing the maximum efficiency, and allowing ten tons per car for rail friction. Let us assume the out-of-pocket cost per thousand gross ton miles to be $1.00, for a haul of 100 miles the expenses would be for the 35,000 gross ton miles $350.00, which divided by 2500 net tons would produce a cost per net ton of 14¢. Now, take tomatoes and forget the difference due to the greater resistance arising from the lighter loading, which would have the effect of reducing the tonnage, but for the sake of illustration assuming the same engine rating of 4000 tons gross and the same frictional resistance, we would have in the case of tomatoes a net weight of 11.5 tons and the tare weight for a refrigerator car of 27.5 tons, plus five tons for ice in bunkers, making a gross weight of 44 tons. Add 10 tons for rail friction, or total 54 tons. This would represent 75 cars. The out-of-pocket cost would be $325.60, but we carry 74 times eleven and a half net tons, or 851 net tons, at a cost of 38.26¢ per net ton or approximately 173% greater per net ton for tomatoes than for coal per ton, not including any cost for hire of refrigerator cars at 2¢ a mile."

[fol. 2223] Now, do you agree that is a sound principle upon which to operate a railroad?

A. No. As I stated in the beginning, that testimony was given merely for illustrative purposes to emphasize the difference in the loading of different commodities, for the purpose of illustrating the principle of the cost of service, but not in the proportions as shown there because those are all purely assumed figures. They purely assumed the 4000 maximum capacity and the perfectly level road and the various other items; with the exception of the way of loading coal and tomatoes, they were all assumed figures. On page 2536 of the record in that case I said:

"Opposition will of course say that the revenue on tomatoes will greatly exceed the revenue on coal, which is conceded, but these figures are used merely to illustrate the point which I desire to make, that the lighter loading of perishables necessarily causes less efficient operating results and are not presented as reflecting actual cost figures. I may say that the first illustration covering the coal cars was our actual operating schedule until September 1930 and still is for dead freight."

That was on the first division, but not for the third division in Florida. The difference would be the 4000 tonnage reported on the first division, while the mile density of traffic reduces the cost per unit as compared with the cost per loading of 60 cars or less in Florida, of considerably less tonnage and that just further illustrates the point that I have been stressing, that the loading on the first and second division, being so much heavier, reduces the cost per unit as compared with Florida.

Q. Have you anything, anywhere, except coal, that loads as heavy to the car and as many cars to the train as this regular trainload movement from Hines to Palatka?

[fol. 2224] A. While I cannot give you the specific trains, I think we would have numerous trains operating between Rocky Mount, North Carolina, and Richmond, Virginia which would have movements in excess of the Hines to Palatka movement. There is no movement in Florida heavier than the log train movement, Hines to Palatka, and I don't know about Georgia. I know the rating is greater up there, but unfortunately I have not the operating files with me that show the rating on the first and second divisions as compared with the third division in Florida.

Q. That is a pretty heavily loaded and pretty efficiently loaded movement, isn't it, 40 cars to the train, loaded to over 60,000 pounds, each car loaded over 60,000 pounds?

A. 40 cars is not the maximum capacity of a train. We operate with 80 cars. If I had time to go through the records, I could unquestionably find many trains operating on the Atlantic Coast Line with tons in excess of the Hines to Palatka movement. Claims for damages to property transported are always serious things with railroads, though not as serious as they used to be. We have reduced that very materially.

Q. You testified down here at Daytona Beach in this same case I referred to, at page 2530, with respect to your loss and damage claims, loss and damage per car and loss or rather percentage of loss and damage to gross revenues. I will read this into the record, as there are only a few of them, and I will then hand you the book and afford you an opportunity to refresh your recollection and tell me whether or not those figures are what you stated as a fact.

A. All right, sir.

Q. I will state them in the record:

[fol. 2225]

Commodity	Loss and damage per car	Percentage of loss and damage to gross revenues
White Potatoes	$2.95	1.25%
Cabbage	3.44	4.37
Onions	9.30	2.02
Tomatoes	16.77	7.82
Fresh Vegetables	9.06	4.14
Average for above commodities	7.98	3.48%

Those are the correct figures representing the results of the roads indicated in my previous testimony. My recollection is that there were 12 roads. The Atlantic Coast Line Railroad in 1930 paid per car tomatoes $24.83 which was 8.10% of the gross revenue received from tomatoes. The other items for the Atlantic Coast Line were in 1931. I didn't show onions or any other vegetables or any other fruit. (Page 866 B of Tes.) The figures you read were for the 12 roads listed. I don't know how much per car or what percentage of the gross revenues we paid out in 1929 or 1930 for loss and damages on claims, or for loss and damages to logs. I have not looked it up. I couldn't tell you whether any of the claims were paid without investigation. I assume there were some claims paid. The loss and dam-

age claims in logs were nowhere near commensurate with loss for fruit and vegetables. Neither is the revenue from logs at all comparable with revenue from fruit and vegetables. I did state at that hearing at Daytona Beach that notwithstanding that the revenue from the passenger business exceeded by a comparatively small amount the operating expenses of the passenger business, that if there was any surplus over and above the actual operating expenses, than the out-of-pocket cost, then the passenger business did not constitute a burden upon the freight business.

[fol. 2226] Q. Well, have you not expressed a contrary view in this case with respect to the log traffic—that it was not earning its way and paying the proper expenses, and a burden on interstate commerce?

A. You are dealing with two subjects. You were in this case getting the cost particularly applicable to log traffic, and my testimony conclusively shows, and it has been found by the Commission and by this Court, that the Cummer Scale was confiscatory. My testimony with respect to passenger traffic that you referred to was brought up in claim made by comparison, that our losses and our stressed condition was due largely to falling off of the passenger business. They were showing that the passenger business was a burden on the freight business. I was showing in my testimony in that case that when we considered out-of-pocket expenses solely attributable to passenger service that the analysis of it showed that the earnings of the passenger traffic exceeded those expenses and therefore, as long as the passenger business was operating at something over and above the out-of-pocket expenses, it was contributing to taxes of any other overhead and was not a burden to the freight traffic. Now, I don't think the same position can be taken with respect to the consideration of individual commodities. The Interstate Commerce Commission has expressed the view that because more than what might be termed an established rate of return was earned from the freight traffic, it did not preclude from the freight traffic if the passenger traffic was not earning a sufficient amount in the aggregate to produce a sufficient return. I think that perhaps explains the situation. The log traffic is not producing a reasonable return, and the comparisons are somewhat different because it is one class of traffic as compared with another. I can see no inconsistency in my position in this case and another case.

[fol. 2227] Q. Mr. Lamb, the record in this case shows that in about 1927 the Atlantic Coast Line Railroad Company was receiving approximately $500,000 of revenue enjoyed from the transportation of logs from four companies alone, and shows that the total operative expense, or out-of-pocket expenses as you call them, did not exceed 20 percent of that amount, and it shows that was from train-load movement alone. It shows that the second year after this higher rating was in effect, the total income from all pine logs in Florida, the total revenue from the transportation of all pine logs in all kinds of single cars and train-loads, because the train-load movement of pine logs has been destroyed, was around $5,000.00, or shows a shade over 1 percent. Do you think on that $500,000.00 of revenue with out-of-pocket expenses of 20 percent, whatever that was, that that was a burden upon that traffic of the Atlantic Coast Line, or upon its revenue? I am talking about train-load movement?

A. First, I am not subscribing to any of the figures that you put in. I don't know that the out-of-pocket expenses were only 20 percent of the revenue. It certainly would be a burden if it were producing $500,000 in excess of that.

Q. I am talking about out-of-pocket expenses of 20% of the gross revenue.

Mr. Alston: May I inquire what meaning Mr. Adair puts on the out-of-pocket costs?

Mr. Adair: The out-of-pocket expenses—I mean the rate it has produced from the Wilson Cypress Company, that that is 20 percent of the revenue.

Mr. Alston: Do you mean by that if he takes that thing which he describes as the out-of-pocket costs in this case?

[fol. 2228] Mr. Adair: No, sir. I mean if it is a burden on that traffic—if their train-load movement is a burden on that traffic of Interstate Commerce if it pays nearly five times the out-of-pocket costs, is what I asked. You have answered it on the passenger trains, you said if it produced any more than the operating costs of passenger trains it is not a burden, and I want to know if it produces nearly five times if it is a burden in any instance on the train-load movement?

A. The relationship of those out-of-pocket expenses to revenue may not be correct. I don't know anything about them. It may not be a burden on other traffic, although I am not prepared to answer that question.

Mr. Alston: I object to that question. The question asked was it (Page 870 B of Tes.) conclusion of law. The facts as stated and the conclusion this witness is asked to draw from it calls for a conclusion of law.

Mr. Adair: I will reduce my percentage to four times the revenue—four times the out-of-pocket expenses that you have defined. I asked if it is a burden on Interstate Commerce or other traffic?

Mr. Alston: My objection is made to that.

Court: Just answer the question.

A. I don't believe as to that particular question that I should attempt to answer it. It has been indicated by counsel that it is a question of law.

Mr. Adair: I will be glad if you will tell him to answer it, your Honor.

[fol. 2229] Court: I think, Mr. Lamb, while I am not ruling that it is a proper question, or proper answer, I think under the circumstances you should answer the question by giving the information you can, or your opinion, if you can. Of course, if you have no opinion about it, you can say so, but I think you should answer the question for the reason that it will be there if the Court Above should consider it material. I might not think it material and rule it out, but your answer would be there for the Higher Court to consider.

Mr. Alston: I would like to make this statement for the record. As I understand this argument, they are undertaking to make Mr. Lamb's statement or what was in effect a statement of law in another case, the yardstick of the law in this case, which I do not think is so. I think the yardstick of the law is the law, and I think the Court is the law in this case. I think what is being asked of him is a conclusion of law.

Court: He is basing his question on Mr. Lamb being an expert witness and being familiar with the conditions about which he has testified, and he is asking his opinion in view of all the facts he knows in connection with the railroad and its operation, whether or not that would be a burden. I think the question should be answered and put in the record if you can answer it, Mr. Lamb.

A. I don't feel that I am qualified to answer that question.

Q. Then you don't feel qualified to say it would constitute a burden upon other traffic or upon the revenue of the carrier?

A. No, sir. While I am an accountant, I am not an attorney.

[fol. 2230] Q. Let me make this a little more specific. The Wilson Cypress Company in the November figures you gave us, show that the out-of-pocket expenses were in the aggregate $4.81 per car for the movement in train-load quantities alone during that month of November, 1930, and it shows that the revenue per car under the Cummer scale was $20.48. You got up those out-of-pocket expenses once, and I am taking your figures on them and I want to know, and assuming that there were 25 trains, solid trains moving to Flatka from Hines in that month of November, 1930, I want to know at the Cummer scale of $20.48, if that movement would have constituted a burden upon Interstate Commerce and upon other traffic?

A. I would say if the costs exceeded the revenue, it did.

Q. I am talking about out-of-pocket costs.

A. I answered it as I understood your previous question. I am unable to answer with respect to the burden on Interstate Commerce.

Q. Or upon the burden on the revenues of the carriers, as to whether it constituted a burden on the revenue of the carriers?

A. These costs represent only a small proportion of the costs. I mean the out-of-pocket costs, and where the total haulage costs are shown including taxes and return on investment, it has been repeatedly demonstrated that these costs exceeded the revenue. I did testify at the hearing at Daytona Beach, Florida, under date of September 28, 1932:

"It is true that when there is added to our operating expenses, taxes, hire of equipment, etc., a proportion of the 5¾% return on investment, that the passenger traffic will show a loss; so will all traffic, for the roads are not earning 5¾% return • • •"

"However, this is not the basis for making a statement that the passenger traffic is a burden on the freight traffic, therefore in my opinion it is an improper statement to say [fol. 2231] that the passenger traffic is burdening the

freight traffic, and this will hold true to the extent that the passenger traffic is producing net revenue over and above the out-of-pocket costs, and to that extent is the passenger business profitable; and also to that extent does it contribute to the overhead expenses and to the relief of the freight traffic."

But the word "profitable" you will find changed, as I qualified that it is not profitable. I think I later on stated that the word "profitable" was an unfortunate usage of the language, but in that case I was not trying to demonstrate a proposition of law, but I was answering it in answer to the statement made by others that the low return on our investment was due to the falling off of passenger business. I think that is entirely different from the proposition that Mr. Adair is trying to force me to answer here. I am not trying to pass on a question of law. I was there merely answering a point raised by the opposition, trying to demonstrate that the passenger business in dollars and cents and not as a matter of law, was no burden in the sense it was taking this out-of-pocket expense. I had no intention of expressing an opinion that would in any way reflect a view on a legal aspect of the case. I was taking it from a strictly accounting standpoint and I maintain that when it comes to a question of asking me for an answer to a question that involves a principle of law, that my answer will have to be "I don't know."

Q. I will be glad if you will give me an answer to my last question from an accounting standpoint. I don't want a law standpoint.

Court: Just answer the question the best way you can.

A. I am not qualified to answer it.

Q. Will you tell me why you were qualified to answer that at Daytona Beach and not here?

[fol. 2232] (Objection to the question by Mr. Alston.)

A. I think there are two entirely different situations involved, and I do not care to express an opinion on it. (Page 875 B of Tes.)

(The hearing was then adjourned and reconvened on July 10th, 1933.)

Mr. LAMB recalled to stand:

On Saturday Mr. Adair mentioned that there seemed to be some question about the numbers of the locomotives used on the movement from Homosassa to Lacoochee, so I wired to Mr. F. B. Langley, our General Superintendent at Jacksonville, to give me the actual records and I quote his telegram:

"Engine 803 used Homosassa to Lacoochee, May 1st to 12th, inclusive, and Engine 819, 13th to 30th, 1929. Same engines used throughout run. Different engines used on train 153, Otter Creek to Lacoochee, Engine 1115 used Trilby Yard May 1st to 8th, and Engine 706, 9th to 31st, 1929.

(Signed) F. B. Langley."

The 800 class engines were used throughout the period to Lacoochee. I took the wheelage reports and some of the train sheets for a considerable period to go through in an effort to determine what was a representative month, and I noticed these numbers repeatedly in the 800 class right through. I don't know why so heavy an engine was employed to transport so light a train as on the Homosassa to Lacoochee movement. That is an operating feature which I have nothing to do with. The 800 class engines are the 170,000 to 200,000 pound engines. I believe that the engines which were referred to were 100,000 to 140,000 pounds. The relation of the weight of an engine to the amount of traffic which it must haul is a matter for the operating department. The accounting department has nothing to do with that. The train crew on this Homosassa to Lacoochee [fol. 2233] movement which picked up the train at Homosassa and came on down to Trilby, did not wind up its operation at Trilby. It went into Lacoochee. Lacoochee is only about 3 miles west of Trilby. The numbers of the engines given in the telegram which I have quoted, are the numbers of the engines that I used in my calculations. Mr. Baptist testified that he could have bought a locomotive of 330,000 pounds, the one which the Atlantic Coast Line was using on log trains. By 330,000 pounds, I suppose he means total weight of locomotive on drivers, which compares to the 170,000 to 200,000 pound locomotive. I am not mistaken when I say that the train crew went on through from

Trilby to Lacoochee. I should have said that Lacoochee is east of Trilby and not west of Trilby. When Mr. Adair raised this question, I substantially repeated his language to Superintendent Langley and asked whether or not different engines were used on the Otter Creek movment and he has replied as shown in this telegram, giving the engine numbers in the 800 class and the same engines used throughout the run. He says that different engines were used on train 103, Otter Creek to Lacoochee. I imagine that that is where the confusion arises. I imagine Mr. Adair has that in mind rather than the engine running through to Lacoochee. He said different engine running on train 153, and following that, engine 1115 used Trilby Yard May 1st to May 18th, and engine 806 September 1st, 1929. My understanding is that the switch engine did not switch out the cars from Trilby Yard to Lacoochee, but the same engine took them out and transported them from Homosassa to Trilby and it had the same crew when it ended at Lacoochee and it had to go back to Trilby to tie up for the night. After going to Lacoochee, the train crew came back to Trilby to tie up for the night. The train crew ceased its operation at Trilby and was ready to go out the next day. It didn't serve any [fol. 2234] points further south than Trilby. The local work that the train crew did between Homosassa and Trilby was in setting up the cars that they picked up at Homosassa that were intended for Otter Creek. The lumber was there picked up. They had to set those cars off. They had to assemble those cars destined to Otter Creek and put them in front of the train, and then when they got to Gulf Junction, those cars were pulled out and set out and the engine had to come back around the Y and catch the train again to go on to Lacoochee. The only other local service that engine performed was picking up the other cars that we show on that Exhibit. They picked up in the month of May a car of tomatoes from Istachatta to Dunnellon and picked up a car of melons from Marian to Dunnellon, and four cars of machinery from Cutler to Homosassa. That was the work performed by that crew. If any service was performed by the switch engine at Trilby, there is not one cent of the expense included in these costs. My costs shown on Exhibit 77A, embraces only the expense of the train crew actually handling it through, so that if the switching crew at Trilby performed any operation, it should be added to this service.

If it develops in any way that there was a service performed, then my costs are understated to that extent. The train crew on the Homosassa to Lacoochee run did not go down to Lakeland and did not perform services between Lacoochee, Lakeland and Tampa. I presume that is entirely due to the fact of the light density of traffic that is offered there. In other words, it couldn't pick up the traffic in an efficient manner and unquestionably our operating officials have handled that and they know more about it than I do and I am only stating the facts with respect to the movement as indicated by the costs. That train crew delivered the cars at Lacoochee and then went back to Trilby and tied up for the night. I think that perhaps illustrates the point that it necessarily holds these locomotives to this particular service and regardless of the fact that the [fol. 2235] Homosassa to Lacoochee movement was not a solid trainload movement. That crew did not perform any service after it got back to Homosassa on the northbound movement. I recall having testified in the fruit and vegetable case on September 28th, 1932, as follows:

"Considering the freight train as a unit, we know that operating with a 100% load should produce the more economical results in terms of cost per thousand gross terms. But it is from the net tons handled that a railway's revenue is derived. If every locomotive were to make its run longer and yet the individual cars on the train were only partly loaded, the operation would not be the most efficient, nor would it be the most profitable. Maintenance ratio of 100% of the capacity of the cars in a train has an even greater bearing on the net return to the carriers than even the maintaining of a ratio of a 100% load to the capacity of the engines. It is a known fact that the resistance against movement over the rails is greater per ton of lightly loaded cars than for heavily loaded cars, and as the overcoming resistance consumes energy, and energy is money, it must follow that the greater the resistance is per ton, the greater is the cost for handling per ton.

"Q. You mean to say the resistance is greater in case of a lightly loaded car than in the case of a heavily loaded car?

"A. Yes, sir."

I still entertain the view set forth in that testimony and it is true that there is more resistance in moving a lightly

loaded car than a heavily loaded car. The idea is this: When a car is loaded heavy, it rolls easier, there is less resistance to the movement than where a car is lightly loaded. Now, that is a matter that has been worked out by tests.

Mr. Adair: Then I take it it is more economical to transport a heavily loaded car than it is a car that is not so heavily loaded?

A. Well, now, that testimony was given with respect to getting the full efficiency out of your locomotive. As I stated there, the ideal situation from an operating standpoint would be to have your car loaded to 100% capacity [fol. 2236] of load and that is one of the elements. Of course, when you compare getting into this traffic, you have 100% empty movement. Now, the cost of handling the empty cars would be greater relatively than the cost of handling the car and contents. Now, I don't mean to put that in dollars and cents. I mean the efforts exercised by the locomotive, we will say, in handling 40 empty cars would be much greater relatively than the energy exercised hauling 40 cars loaded. It wouldn't affect the consumption of coal. It wouldn't affect the cost in the illustration here because you are not operating to the full capacity of your locomotive. That was to give an ideal situation and you are not operating to the full capacity of your locomotive. It is almost impossible to conceive of operating in Florida at 100% efficiency. You cannot get your 100% capacity of loads and contents of your cars. The coal consumed in hauling 40, 50 or 60 empty cars would be substantially the same as that consumed in hauling loaded cars the same distance. There would be no perceptible difference. Whether the coal consumption would be substantially the same in the carrying of a train of lightly loaded cars or a train of heavily loaded cars, depends on how nearly they come to the capacity of the locomotive. Necessarily, if you are going up a long stiff *trade*, it would require more effort for the locomotive and you would probably consume more coal. You would have to keep up your steam pressure to a higher point than on a level track. Relatively, the amount of coal consumed in handling empties and handling the loaded train is substantially the same. The proposed report of the Examiner in the vegetable and fruit case pending before the Interstate Commerce Commission included a recommenda-

tion that the arbitrary be taken off for through fruit and vegetables on all railroads in Florida, except the Florida East Coast Railroad. That is the proposed report and not the final report and I believe before we get through that will [fol. 2237] be cleared. I have not read the proposed report of the Examiner very thoroughly and I have not had the opportunity to digest it, but I do know that the carriers are preparing to make a vigorous protest against the proposed report. I don't know what the carriers are protesting, as they have not had time to prepare it. It is under preparation now.

By Mr. Gutheim:

The operating expenses charged for locomotive fuel coal are made up as they go into operating expense account in this manner: the price at which the coal is purchased at the mines is shown, to which is added the freight paid to foreign lines, and that is taken from the different sections and the cost is apportioned on the average cost of the coal purchased in those sections on the System average cost. When I speak of foreign railroad freight, I mean the charges that the Atlantic Coast Line Railroad pays to its connections for bringing the coal from the mines to the Atlantic Coast Line tracks. The locomotive fuel coal is not always consumed or delivered to engines at a point where the Atlantic Coast Line receives it from its connection. Coal is transported from various fuel stations along the System. I am unable to state whether some of these fuel stations are right at the junction with the foreign line at which we receive the coal. We fuel engines at Richmond. That might be true of coal that comes to the Atlantic Coast Line Railroad from the Chesapeake and Ohio at Richmond. Assuming that the coal is not delivered to our engines at Richmond but is taken down the line from Richmond, the charges for hauling the coal from the junction where we receive it from the connecting road to the point where it is delivered to the engine, are not chargeable to fuel. That is absorbed in other expense—the out-of-pocket expense for [fol. 2238] the System. There is no specific charge that is made in any of our accounts for the transportation of such coal from the point where it is received from the connecting line, to the point where we use it. We have no occasion to make such an expense, and that just brings to mind that

in all of these costs, they are understated with respect to the cost per net ton, or net freight, because the expense of handling non-revenue freight has not been specifically assigned to that. (Page 855 B of Tes.) The expense of handling non-revenue freight in this tonnage does appear in our operating expenses as finally computed, but the point that has been made is that there is so little of that service performed in Florida as compared to a like service on the balance of the System, that the balance of the System is bearing that expense and Florida is not bearing it. In other words, for every steel rail that is purchased at Pittsburgh, or wherever it is purchased, and delivered to the Atlantic Coast Line at Richmond for use in Florida, it is hauled the entire length of the System from Richmond to Florida at an expense to the balance of the System. When I was on the stand before, I did testify that the charges of the Atlantic Coast Line Railroad in hauling coal to its Third Division were not taken into consideration and computed in the cost of transportation in Florida. I testified that it was not included in the Third Division cost and that is one of the reasons why the Third Division cost should be increased. The balance of the System performs a tremendous volume of non-revenue service to the balance of the line operating in Florida. It is correct that I testified in regard to the cost of transporting freight in Florida that we didn't take into consideration the expense of the Atlantic Coast Line Railroad taking coal and other material to Florida. It is correct that the cost of hauling that coal to Florida is in the total operating expenses of the System. In making a statement of the expenses for [fol. 2239] Florida, the only place where that appears is on Exhibit 2, where we show the results of operations in Florida and that was assigned on an operating revenue basis to the State of Florida,

Q. And to the extent of operating expenses of handling the coal in Florida is to the total operating cost of the System you applied a percentage of that to get a Florida total and you get a percentage of that item in the Florida total, to you not?

A. To a limited extent, because this expense is borne by the lines outside of Florida. If we could eliminate from the System expenses those expenses which are incurred by the balance of the System to haul this traffic to Florida

and credit the System with those expenses and debit Florida with the proper amount, then the average ratio in Florida would be very much higher than the balance of the system.

Q. To the extent that you determine for illustrative purposes the 35% of your total operating expenses should be allocated to Florida to the extent that those total operating expenses including the cost of handling locomotive fuel coal, you would therefore put 35% of that cost into the Florida expenses, would you not?

A. No, I don't think we would, for the reason that I have just stated. If you are attempting to assign expenses to the State of Florida and develop the actual cost in the State of Florida, then you should charge to the State and credit to the System whatever cost per ton mile is incurred for handling this company material. Now, if you develop that, assuming that the cost to the System included in the System expenses, is a million dollars for this non-revenue service attributable to Florida, then you should attribute the System expenses outside of Florida to the million dol- [fol. 2240] lars and add that to the Florida expenses, and therefore you destroy the ratio of that level of operating expenses because Florida expenses would be higher and System expenses would be lower as I have repeatedly demonstrated through every formula or statistical test that we can make. No, we never know in total operating expenses whether the non-revenue service is a million dollars, ten thousand dollars, or ten million dollars. I used the figure of a million dollars for illustrative purposes. It may be greater than a million dollars.

Q. Assuming then a total operating expense on your railroad of ten million dollars that your locomotive fuel transportation cost on your railroad was a million dollars, and assuming that 35% of your total operating expenses was allocated to Florida, the 35% so applied to the total expenses would produce 35% of a million dollars, or $350,000, would it not?

A. That would be on the definite assumption of the way that the expenses are assigned to Florida. The expenses are assigned to Florida on a revenue basis and not on your assumed question. If there be a million dollars expenses and transportation expenses were a million dollars and 35% was assigned to Florida, 35% of a million dollars would be $350,000, but I cannot agree with you that that would

be included in the assignment of operating expenses to Florida. It is true that under the illustration the $350,000 that we would charge to Florida, 35% of one million dollars, that represents the cost of transporting locomotive fuel on the System, would be included in the operating expenses charged to Florida, but I still want to stress this point: one million for Florida, that brings in 35% of the movement, but let us take this illustration—we pick up a carload of fuel at Richmond and haul it say 800 miles to Florida. Now, then, 800 miles and 100% for that expense [fol. 2241] is in the System figures, and Mr. Gutheim assumes that only 35% would be chargeable to Florida out of that 100%. Under his assumed illustration, he would assign 35%, whereas 100% should be directly assigned to Florida. In my cost study of the Hines to Palatka movement, I included as an element of the cost of locomotive fuel coal transported at 5 mills per ton from the point where we received that coal from the foreign railroad to the Florida state line and properly so. 5 Mills per ton is an arbitrary figure. It is a rate that is consistently charged by practically all carriers in the country for handling property used in construction work and in our operating accounts we have one transportation for investment credit in the operating expenses. That means that when we haul material for the construction of a bridge, we will say, over the system, we charge to capital account 5 mills per ton per mile for the ton miles created by that material over the System to the point where it is to be installed. We currently credit operating expenses with an item, transportation for investment credit, and we reduce our operating expenses for the System that much, because we have capitalized that much and charged the amount to capital account instead of operating expenses. (Page 890 B of Tes.) Now, the Interstate Commerce Commission permits you to use a figure up to 7 mills per ton mile in your construction work. That is universally used throughout the United States. If you exceed 7 mills, then you must explain why the cost exceeded 7 mills. In my calculation I wanted to be ultra-conservative and I used 5 mills instead of 7 mills. I used the 5 mills in the Hines to Palatka movement and out-of-pocket expenses in the Hines to Palatka movement and in the Homosassa to Lacoochee movement. The average 5 mills is used for any company material en-

tering into construction work. That is identical and parallel to the situation we have before us here. The Commis-
[fol. 2242] sion said you can charge to your capital account and capitalize 5 mills per ton mile expenses created over your System to bring the material to the point of issue or application. Now, we have the same identical situation here, and let me add, you credit your operating expenses to the System and debit your capital account. Now, in the case of this coal, we have the same 5 mills in the operating expenses for the System, and we have taken that 5 mills out and added it to the cost of this coal, compared in the previous illustration as capital and credited that amount to the Hines to Palatka charge to balance off the operation to investment credit, using that to equalize the two classes, being identical with the condition of investment for improvement and handling of this coal, if you want to get the expense to the State of Florida or expenses for handling the particular log traffic in this train. When we get the charge at 5 mills per ton mile for the construction material, that charge is ultimately included in the charge to our cost or road and equipment. That is why it is added to investment account and credited to operating expenses. That is the total charge that is made on that account to our cost for road and equipment. That is the total cost as far as the transportation over our line is concerned. Of course, the freight paid to a foreign line would be added to the cost of the material. When we put the 5 mills per ton mile in our Hines to Palatka cost, we put it into our out-of-pocket cost study. I subsequently expanded those out-of-pocket costs to reach a total haulage cost for the Hines to Palatka movement. I expanded on the basis of the out-of-pocket cost to the System. I would have been incorrect in expanding the Hines to Palatka out-of-pocket expenses on the System ratio for the out-of-pocket expenses had I not added the 5 mills per ton per mile to the cost of fuel from the point where we received it from the
[fol. 2243] mine to the point where we delivered it to Florida. That is, to the Florida state line. Just as I illustrated with respect to the credit to capital expense, transportation for investment credit, in the case of handling material for a new structure which was charged to capital account, we deducted from the operating expenses for the System this 5 mills per ton mile and capitalized it. Now it seems

to me that is an absolutely parallel case to what we have here. That expense of handling this coal from the point where the Atlantic Coast Line received it, to the Florida state line, is all borne by the lines north of Florida. Now, when I get that coal into Florida, I have not any corresponding cost of handling there the parallel of that 5 mills per ton per mile, which is in the System operating expense, therefore I add 5 mills a ton mile to the Florida cost to bring that up to a comparison with the System costs, which are in the out-of-pocket expenses for the System. Now, you see, all of the expenses for hauling that coal are in the out-of-pocket expense group of accounts for the System, but not a cent of it is in the Florida part of it until I put in the 5 mills per ton mile. I add 5 mills per ton mile to the cost of fuel in determining the Hines to Palatka cost as part of the out-of-pocket expense, and it is properly so. I think the illustrations I gave with respect to the capitalizing charges so clearly illustrates the principle, that I cannot conceive of any doubt in it. Mr. Gutheim is trying to show that in applying the System operating ratio to this cost per gross ton mile in out-of-pocket expenses in the Hines to Palatka movement, that I have that figured in there twice. It wouldn't be in there at all unless I put in the 5 mills and in order to raise the out-of-pocket expense, Hines to Palatka, if I didn't have it there in order to make the System out-of-pocket expenses comparable, I would have to [fol. 2244] add all of this out-of-pocket expense for this handling of fuel to the System and it would show a comparison that is not fair or properly applied. You have it in the System, but you do not have it in Florida until I put it in there. Having reached a total out-of-pocket expense for transporting the logs from Hines to Palatka, and having included herein 5 mills per ton mile in the cost of fuel coal and then expanding that out-of-pocket cost to reach a total haulage cost, you would necessarily expand 5 mills per ton per mile just the same as you expand the other costs in the balance of the System. We just assume 25.91%, we will say, and now if I used the 25.91% in expanding the out-of-pocket expenses from Hines to Palatka, I must add 5 mills a ton mile to equal what 25.91% represents of the System out-of-pocket costs, because that 5 mills is in the System and if I didn't add it into the Hines to Palatka movement, then this 25 would be something less—24 or 22—and then

if I took that out of the System and reduced the relationship of the System out-of-pocket cost, excluding this cost of performing this haulage of fuel, I would reduce this 25.91% to some percentage below that, which would then raise this Hines to Palatka movement to a higher figure than is obtained under the application of the 25.91%. The application of the haulage expense expanded ratio to the Hines to Palatka out-of-pocket cost study would expand every item in the out-of-pocket expense in the relation that those items bore to the total haulage expense. That would include everything in the out-of-pocket expense in order to get your total haulage expense not reflected by your out-of-pocket expense. It wouldn't expand the 5 mills per ton mile. It would expand the amount of money developed from the application of the 5 mills per ton per mile. It necessarily follows that it would expand the out-of-pocket expense including the 5 mills per ton per mile, but let it be strictly understood that it does not expand the 5 mills, [fol. 2245] but it expands the amount of money derived from the application of 5 mills to the tons hauled. In other words, it has this effect—it does not expand that money, but it adds to that money the expenses embraced in haulage expenses that are not reflected by out-of-pocket expenses. In other words, the out-of-pocket expense represents 25% of the total haulage expense and the other haulage expenses embrace superintendency and all other items in operating expense that we cannot allocate directly to a train. Using the division 25 into the unit cost (Page 896 B of Tes.) per gross ton mile, we produce or add to that gross ton mile the balance of this other 75% of expenses that are not reflected by the out-of-pocket expenses. It is an expansion of that out-of-pocket expense, but it is adding to the out-of-pocket expenses the other 75% that are not included in the 25%. Assuming that you expand the total out-of-pocket expense to $1000 and your expansion ratio was 25%, then your total haulage expenses would be $4,000, but in assuming that in the $1000 there was $300 of the 5 mills per ton mile and that you apply the same 25% expansion ratio, you would not then in your haulage expenses have $1200, because in one case you have only 25% as reflected by out-of-pocket expenses and you have 25% of your expenses, which merely represents the out-of-pocket expenses, and when you raise that to 100% for haulage ex-

penses, it does not mean that you are inflating your out-of-pocket expenses, but you are adding to it the expenses that are not included.

Q. When you expand your out-of-pocket expenses to total haulage expenses and you agree that it produces $4,000, could you produce that $4,000 without expanding the $300 in the same way to make $1200?

[fol. 2246] A. I can't answer that yes or no, because we happen to have two different views and I cannot agree to your proposition. The point is that we are not trying to raise each out-of-pocket expense. Take trainmen wages, for example. We don't raise or increase trainmen wages one cent by the expansion of 25% or by dividing the 25% and multiplying by 100 to produce total haulage expenses. That is the difference between Mr. Gutheim's view and mine. He seems to think that by dividing your enginemen and trainmen expenses by 25%, that you increase that amount up to your 100% but you do nothing of the kind. That 25% merely represents the relation of the out-of-pocket expenses to the total other haulage accounts of the System and it is not an inflation of that particular account, but adds to that account the other 75% that is not included. It is true that you get your $1,000 out-of-pocket expenses representative of your total haulage expenses. You apply your expansion ratio of 25% and that produces $4,000 for your haulage expenses. The $3,000 added represents operating expenses. Certainly when you apply that ratio of 25% to the $1,000, it includes the $300 representative of the 5 mills. If the $1,000 operating out-of-pocket expense includes the 5 mills, it is axiomatic that it is merely raising or bringing in the other expenses. It is not inflating that item. I can best illustrate it by your trainmen or enginemen. We get in this cost, for example, on Exhibit 77-A of trainmen and enginemen, $535.26. Now when you expand this total amount of operating expense, $1,682.42 by 25%, you don't increase the charges to account 392 one cent about your $535.26. You don't inflate that account. That is the erroneous premise of Mr. Gutheim's cross-examination. What you do is to add to this out-of-pocket expense the other 75% that is not affected by out-of-pocket expenses to get your 100% of haulage costs. So far as I know, it is not possible to show the ratio of expenses in [fol. 2247] Florida on any other basis except that which I have used. This 5 mills per ton mile is not specifically

set out in operating expenses as reported to the Interstate Commerce Commission as a specific item, but it has been accepted by the Commission universally over the country as being a fair and reasonable charge for company material. I know of many roads which do separate their expenses as between states and then when they make the actual assignment of expenses to states, they credit each state with service performed for another state. They might not use 5 mills, but it is apportioned to determine the actual cost for each individual state. When I say a fair and reasonable charge, I mean an average charge for the System. It applies to coal; it applies to ballast; it applies to steel, to rails, to bridge structures, etc. I do not have any figures to show what the cost of transportation would be relatively for company material, machinery, as distinguished from material ballast. The machinery would represent such an infinitesimal amount of the total material, that it was never deemed necessary to make that definement. When in my criticism of Mr. Saunders' testimony I pointed out that Mr. Pettijohn in the hearing before the Interstate Commerce Commission, had made a certain allocation of operating expenses, I did not necessarily mean to approve Mr. Pettijohn's allocation. I was using it because the witness for the other side had presented that figure and I was simply adopting his own figures.

[fol. 2248] Mr. Saunders, in making his allocation in his Exhibit 79-A, used the average weighted period in taking the operating expenses, but he applied 1930 percentages in assigning his expenses and not the weighted average expenses. He applied the weighted average assignment of expenses for these years to the weighted average results of expenses, else the results would not be correct; if you are applying the weighted average expenses you should likewise apply weighted average units. In Mr. Pettijohn's allocation of expenses he could not allocate accounts 227 to 235 entirely to line haul, those accounts being Maintenance of Way and Structures, in sub-divisions, station and office buildings, roadway building, water stations, fuel stations and shops and enginehouses. What Mr. Pettijohn did, and the only basis on which he could assign the accounts, is the distribution made in our operating expenses. Now, there are only certain accounts that are separated between yard and others; and account 227, Station and Office Buildings, is not a separation between Yard and

others; that was one of the common accounts. Mr. Pettijohn did not assign station and office buildings to line haul. I don't think Mr. Pettijohn would have been correct to have assigned these five accounts 100 per cent to line haul. The station and office buildings include both yard and road employees and are not in all cases assignable. It is correct that Mr. Saunders has assigned 86.3% of these accounts to line haul. In our maintenance of equipment accounts I don't think it would be correct to assign superintendence, shop machinery, three steam locomotive classifications and the three freight train car classifications entirely to road haul, because your steam locomotive repairs [fol. 2249] includes the repairs to yard locomotives, and I wouldn't say it would be proper to assign 100 per cent to line haul. I recognize that Mr. Saunders on these accounts assigned 63.5 per cent. I recognize also that work equipment, items 326 to 328, also injuries to persons, insurance, stationery and printing and other expenses should not be assigned 100 per cent to road haul. I also bear in mind that Mr. Saunders assigned only 63.5 per cent to road haul. In the transportation blocks, eliminating those that are definitely allocated, I think it would be proper to make a sub-division between line haul, so that line haul would be charged with less than 100 per cent. Yes, I recognize that Mr. Saunders, with respect to those transportation accounts, charged various percentages less than 100 per cent to line haul. I have not checked out Mr. Saunders' percentages assigned to line haul or Mr. Pettijohn's percentage to see which is the more correct.

"Q. If it should appear that Mr. Pettijohn had assigned 100 per cent that would certainly be wrong?"

"A. I would have to qualify that to certain accounts. I would have to check the accounts indicated. I agree with you that there are certain accounts that could not be assigned 100 per cent, and you can distinguish those under the formula used by Mr. Pettijohn under direct assignment for yard and road expense."

I am not prepared to say just which, if any, might be properly assigned 100 per cent to road haul; I would want to check each account. With respect to Exhibit 72-A and the other exhibits of the cost of repairs of the cars used in the log service I do not have an analysis of the specific

repairs actually made to these cars by the Atlantic Coast Line and the cost therefor that properly should be charged. I think that it logically follows that cars couldn't be op-
[fol. 2250] erated for three years without some repairs other than the repairs made by the logging company for the damage to the cars from rough handling. I know something of the extent to which they were repaired by the lumber company; I had a number of bills that were rendered against the lumber company for materials that were furnished which they were to use in the repairs, the flooring, due to damage from rough handling and certain other parts of the car damaged by rough handling. I do not have the exact figures as to the amounts of these bills; I went through them and analyzed them. I think I can give you the amount of the actual revenue earned by the Atlantic Coast Line Railroad on the traffic other than logs which were handled in the train on which I studied the cost in this Hines to Palatka movement. (Tes., p. 905 B.) I have that figure somewhere in my file but I am unable to put my finger on it now. I will try to get it for you.

"Q. Now, in one of your calculations it seems to be your contention that an operation of 62% should be used for Florida in order to equalize the Florida operation with the system operating expenses. Do you mean by that that there should be a margin of 38% between revenue and expenses in Florida?"

"A. No, you misunderstood my testimony. Mr. Saunders on Exhibit 71-A used the system operating ratio of 78.84% to raise certain expenses on his ratio. My point was that the ratio of 78.84% did not produce a 5¾% return. As indicated in 1930 the rate of return was only 2.37% and in Florida it is only 1.17%. But I used the sys-
[fol. 2251] tem to make it comparable with Mr. Saunders figures and I found that the investment for road and equipment for that year, applying a 5¾% return, would necessitate a net railway operating income of $17,593,712.00, but as a matter of fact we only earned $7,241,304.00. Now, in order to make a return of 5¾% in that year it would have been necessary to have reduced our operating expenses by the difference between the seventeen million we were entitled to and the seven million that we actually earned, which amounted to $10,352,408.00. Now, I then took our

operating expenses as created, which produced the 2.7% return, which were $49,685,460.00, and deducted this $10,352,408.00, and would leave operating expenses necessary to earn a 5¾%, $39,333,052.00. Now, our operating revenue that year of $63,019,957.00 and those expenses would produce a revenue of 62.41%, and has no relation to an assignment to Florida, but is simply substituting a correct ratio for an erroneous ratio as used by Mr. Saunders. It is right that when I use the false operating ratio I expect the relation of operating expense to operate revenue. It is correct that if I increase the operating revenue and my operating expenses are stationary I of course decrease my operating ratio. You either increase your revenue or decrease your expenses to reduce your ratio. If your operating revenues remained stationary and you decreased your operating expenses you would decrease the operating ratio. I do not know of any other record which is available to the public aside from the valuation report of the Interstate Commerce Commission which divides the investment of the Atlantic Coast Line System as between the states, but that does not preclude the fact of that report being wrong. It is arbitrary to use the ratios of costs to repro- [fol. 2252] duce new the property of the Atlantic Coast Line system as applied and for the purpose of assigning operating expenses to the State of Florida. I would not say that the additions and betterments to the Atlantic Coast Line Railroad have been in exactly the same proportion in each of the investment accounts since the valuation date. Generally speaking I should say that they have not been in exactly the same proportion in each State in which it operates. It is possible that the additions and betterments in one account, in one State, would greatly exceed the additions and betterments in the same account in a second State. I think in all likelihood there would be a difference in the additions and betterments in the second State in one account and in the same account in the first State; it would be coincidental if they were all identical. But it so happens in Florida occur our heaviest expenditures, and the point is it increased the expenses in Florida in relation to the balance of the system very substantially from the figures used by Mr. Saunders, and as illustrated by Mr. Willoughby, the increase in the relationship percentage of certain accounts was in excess of 100 per cent.

"Court: Do you mean additions and betterments in Florida exceed those in other States in proportion to the mileage?"

"A. Yes, sir. There may be certain accounts in Florida that would necessitate heavy expenditures, and then those expenditures would not be necessary in another State, and that was the fact in the period between 1917 and 1931."

"Court: I was speaking with reference to additions and betterments. Did they exceed in Florida in proportion to mileage the additions and betterments in other States, do you know?"

[fol. 2253] "A. Well, I couldn't answer that off hand, your Honor. I was dealing with my investigation which led particularly to the primary accounts used by Mr. Saunders, and Mr. Willoughby, who has checked over that valuation work, had certain accounts, or practically all of the accounts checked up, or rather test checked in order to find whether or not the percentages were higher than those shown by Mr. Saunders, and as indicated by him, they were higher."

It is possible that the additions and betterments in some respects in Florida could be at a relatively less rate of increase than on other portions of the system. The grading per mile in Florida might have been less than on the balance of the system. I would have to check up on the ballast per mile in Florida. It may not be with ballast. Before agreeing that it would be less or greater I would want to develop the percentages. I have not submitted here any subdivision of the property investment account, or any sub-division of our 1917 return, or 1917 cost of reproduction new, plus additions and betterments divided between the various States for the years subsequent to 1917; that is quite a tremendous task and a most expensive proposition to bring that down by primary accounts. All of these additions and betterments that I have reported to the property since 1917 are reported on the books of the company. Not all of that work has been reported to the Valuation Committee of the Interstate Commission. Our comparitive values are sent to the Commission when we make the report, but we have not completed the total results by primary accounts. We are not up now by any means. The Commission is now jacking us up because we are way behind. (Tes., p. 910 B.) All the underlying data is in possession of the Atlantic

Coast Line Railway and no where else except with the Com [fol. 2254] mission; as far as we have completed it it is up to date, and is there so far as we have it.

I have not submitted here any basis of dividing system operating expenses as between Florida and the balance of the system by way of substitution for what was suggested by Mr. Saunders. The only way to do that would be an arbitrary assignment of expenses. An arbitrary proposition would not produce but arbitrary results, and the cost is almost prohibitive to develop that. Therefore, I would not undertake to make any arbitrary apportionment as did Mr. Saunders. With respect to the sparcity of traffic in Florida as compared with the balance of the Atlantic Coast Line system, I used the revenue tons per mile of road as the unit of measure as density of traffic, which is generally used by the Interstate Commerce Commission in their measure. In the ascertainment of that you would multiply the number of tons handled by the number of miles each ton was hauled to get the ton miles and then divide by the miles of road. Ton miles have no relation to the loading on an individual train. It reflects the density of the aggregate movement over the line during a year, for a year is usually the measure to develop the density of traffic per mile of road for that period. Generally speaking, I would say that the assembled service by which freight is gotten together for movement in a train to destination proceeds at a slower rate of speed than our road haul after our train is assembled and moves. In the gathering service it would be less speedy than when we hit the main line and highball.

"Q. Is the number of miles per car per day that your car incurs reflective of all the miles made in gathering service or road haul service?"

[fol. 2255] "A. Whenever a car mile is created in road service it is one of the measures, regardless of just where the car mile was made, whether on the gathering line or main line."

The way we record car miles and ton miles is from what is termed wheelage reports. Every time the train starts out the conductor makes out what is termed a wheelage report, which contains a list, the car number and initial, the tare weight of the car and the net weight of the car, and the point it was picked up on that train and the distance carried. Now, wheelage reports may show that a train

started out at point A, we will say, with 100 cars, and when it reached point B it dropped ten cars, and when it reached point C picked up five cars, and so on as it went along. Now, the Car Accountant takes each of these movements from the wheelage reports, which has station numbers on them, from which is entered the distance which the car is handled; the distance is multiplied by the number of cars moving that distance and for each car in that train. The total car miles in the particular train are added to the car miles in other trains and the ton miles are worked up by the auditor of freight receipts in his statistical division, taking the actual movement of the ton miles the same way as the car accountant does the car mile, and they secure all of these ton miles and car miles from these two sources, the waybills and wheelage reports,

If we start out at A with fifty refrigerator cars, A being a point in Florida, the empty refrigerator cars come from various points to go to A, the nearest junction point on our line to the forwarding point. In some cases it would be true that to the extent that our fruit and vegetable traffic moves north to Richmond we would have a considerable volume of our refrigerator cars returned empty to us at Richmond and we would return them to Florida, and in [fol. 2256] other cases the Fruit Growers Express, who own the refrigerator cars used by the Atlantic Coast Line Railroad, would handle that and they might come from a point in the southwest and be turned over to us at a nearer point of interchange, depending largely on the season and the supply in the traffic density, but not necessarily depending upon the loaded traffic. We might be moving it to New York, and there might be a surplus of cars, we will say from the southwest, that are empties that are brought back to this section, and that is handled to produce the greatest economy in empty car mileage. Yes, we then take those empties to A and distribute them as I have testified, and bring back loads into A, and then they are made up into trains to dispatch to destination, or towards destination. This fruit and vegetable traffic is generally designated as perishable. Generally speaking, when it is of a perishable nature they handle it in the faster trains. If it is something that would not perish by delay it may be handled by slower trains. Some is handled by the slower trains and some by the fast trains. The perishable freight is generally

handled at a higher schedule than dead freight, like coal or phosphate rock, but quite frequently contain in it some of this dead freight. Where they have an insufficient load of perishables then dead freight can be added so that it would then move as rapidly as the perishables. If we had an engine that was rated to handle 4000 tons of freight from A to the nearest division point, and there was only 3000 tons of perishables, if we could add 1000 tons of dead freight and maintain the schedule we wouldn't send it out with 3000 tons. When rating an engine you must necessarily rate it not only from the standpoint of the tons it is to carry, but from the standpoint of the schedule under which it must arrive at the nearest division point. (Tes., p. 915 B.) It is true that you must bear in mind that you [fol. 2257] will expend part of the available effort of the locomotive in dragging tons and another part in making speed; you can haul a greater amount at the slower speed than you can at a higher speed, using the maximum capacity of your locomotive. I think it largely follows that if your maximum capacity of your locomotive at ten miles an hour were a thousand tons and you wanted to speed it up to thirty or forty miles an hour you would have to reduce your tonnage to maintain the thirty mile speed. Yes, when you get your train of perishable freight assembled at A in Florida, and assuming it is destined to New York, it would then move over our main line towards New York, and the ton miles in Florida would be put in the system ton miles. A ton mile starts from the point of origin on our line and ends at the point where it passes off our line. When you compare the ton miles that might be done in Florida with the system you are making an unfair comparison because the low density of traffic per mile of road in Florida has pulled down the system average or density, but when you deduct your tons and ton miles for Florida and make a separate calculation deducting the ton and ton miles in Florida from the system generally, ton and ton miles, then you find the system density increasing materially. I can illustrate that last point. In 1930 the ton miles in Florida were 359,979 per mile of road while for the system, excluding Florida, there were 648,399. Now, if you would take the system average for that year you would find the 648,399 a shade lower because it would reflect the low density of Florida, so that in getting your density of traffic per mile of road and making a comparison for the State of Florida

with the system you must exclude Florida from the system figures to get the ratio, the true ratio. "Yes, after you get [fol. 2258] this train assembled at a point A and push it north to destination to take it to the next point B, which is Jacksonville, and you thus make ton miles to Jacksonville and must take account in Florida. And then you would take the train or take those commodities in the train from Jacksonville to your next division point north, and then you would make more ton miles, part in and part out of Florida.

"The placing of the empties would have nothing to do with the ton miles per mile of road. The ton miles per mile of road are based on net ton miles the actual load in the car made.

"Q. Would it be possible to make the ton miles or not from A to Jacksonville unless you had first distributed the empty cars out of A to the various loading points, and then picked up the loaded cars and bring them back to A?"

"A. No, you could no more move the loaded cars of perishables from A to Jacksonville than you could move a car of logs from Palatka without first placing the empties."

I did not testify that the bridges of the Atlantic Coast Line Railroad north of Florida were all steel and concrete. I said the majority of our larger bridges across the larger streams, and in many cases the swamps in the northern part of the State, were built of steel and concrete. I expect there are some small timber bridges north of Florida. I am not testifying as to the cost of construction of a timber bridge in comparison with a permanent steel and concrete bridge, but I wouldn't hesitate to say that steel and concrete require very little maintenance. The principal thing is to paint the steel in order to preserve it, while you have to replace and repair your wooden bridges. I was connected with reporting of additions and betterments to the [fol. 2259] Interstate Commerce Commission. I think we have had occasion to report concrete bridges as additions and betterments where you put in a little larger structure or replace an old one with a larger structure. Yes, we have had occasion to report a substitution of steel and concrete bridge structure for a pine and timber structure over the same stream. I cannot tell you off hand what the relative cost of the two is, but I do know the cost of maintenance is greater in the wooden structure than the steel and concrete.

I cannot answer definitely just where we get timber and piling, from points of origin on our line or not, for the construction or maintenance of timber and piling bridges on the Atlantic Coast Line. We do not get substantial amounts of timber and piling from points on our railroad in Florida that is handled to points north of Florida and used in construction and maintenance. I did make investigation with Mr. Willoughby in discussing that very phase of it. It developed that there was no service, no like service, performed for the system in Florida as compared with the service performed on the balance of the system for Florida. I took that question up earlier with Mr. Willoughby and was informed that we did not use the material there. I am prepared to state that the Atlantic Coast Line is not to-day using on its lines north of Florida timber, piling and ties and other forest products that are produced at points on its line in Florida and moved by it as company material to destinations north of Florida to any appreciable extent. We buy our ties on right of way as largely as possible, very near the points or sections where they are to be applied. And my information from Mr. Willoughby is that we are not using Florida ties in the points north to any appreciable extent.

[fol. 2260] As far as the Atlantic Coast Line's operations are concerned I don't believe there is any appreciable difference in the operation due to difference in temperature. That is, we are not subjected to extreme cold on the northern part of our operations. I do not know to what extent, if at all, engine ratings of the Atlantic Coast Line Railroad are decreased by temperature. As to the operations of the Atlantic Coast Line Railroad at Palatka, I have gone over the blue prints and gone over the operation in elaborate detail with Mr. Langley. I have blue prints of the yard and all of the operations. I have never examined the operations of the Atlantic Coast Line Railroad at Hines. Neither have I examined the operation between Hines and Palatka, nor at Homosassa nor at Lacoochee. I have examined the records of the operation of trains between all these points very carefully and have examined the time tickets and vouchers and payrolls, and the operations of these trains, and the wheelage reports which indicated the movement of the trains. As far as the items that enter in the accounts are concerned I think I am fairly well informed on them.

The records that I have referred to are the official records of the wheelage reports and our way bills and in each particular case I have examined the vouchers and payrolls, and gone over the papers from which the cost figures are derived here. As far as the physical operation is concerned in the operating end of it, I have not had anything to do with it. In each instance those records are the records of the Atlantic Coast Line Railroad. (Tes., p. 922 B.) Those records are not all available to the public. They are the current records of the company currently compiled to record our operations, and official records from which our reports are made to the Interstate Commerce Commission and all the State Railroad Commissions.

[fol. 2261] Respecting the practice of a railroad to handle traffic on its own line as long as possible I say that naturally any road tries to handle it where they will get the most revenue out of it. They try to handle it as far as they possibly can efficiently.

"Q. That is to say that if you have a car load of tomatoes originating on your line and destined to New York that you would endeavor to hold it on the Atlantic Coast Line rail to Savannah and you wouldn't give it to the Seaboard at Jacksonville?"

"A. It would be a poor business policy to divert it to a competitor if you could haul it over your own line."

By Mr. Adair:

In those computations and comparisons with respect to the transportation of coal and vegetables that I discussed upon my cross examination I was dealing with a purely hypothetical case; what I was doing was applying a formula to a hypothetical case. It is correct that the following is my testimony and is the application of this formula for the transportation of coal and vegetables:

"Let us assume the engine capacity to be 4000 tons gross on a level track at the most efficient speed. Take coal, for example, and assume 50 tons loading and 20 tons tare weight, a gross weight of 70 tons per car, or with a tonnage rating of 4000 gross tons, in round figures 50 cars in a train, producing the maximum efficiency, allowing ten tons per car for rail friction."

[fol. 2262] That allowance of ten tons per car for rail friction is what we generally use in our operation and practically all railroads use that.

In my exhibit No. 23, under the caption, "Out of Pocket Expenses, No. 324," Fuel for train locomotives is stated at $1,138.49. In my testimony at Wilmington on May 30th and 31st, I said, "Our general superintendent of motive power who furnished me the entries for the fuel developed from the tickets used at these coaling stations, showing the total amount of these log trains at Palatka, 136 tons, at a cost of $3.634 per ton, amounting to $457.50, and at Wilcox 155 tons, costing $2.573, or a cost of $398.82."

That makes a total for cost of coal during that month of November 1930, exclusive of the five mills per ton mile of $856.32. Therefore, the five mills per ton mile calculation on the Palatka coal and on the Wilcox coal amounted in the aggregate to $282.17. It is correct that $282.17 is therefore included in the total of $2,398.55, total out of pocket expenses.

Q. And, therefore, when that $2,398.55 was expanded that was expanded with it, and in it that $282.17?

A. No, sir; that is where you are wrong. That was not expanded one cent. You want to understand the word "expanded" for this was added. These figures were not expanded. In other words, the account 392, train enginemen, shows $506.19. Now, under no calculation that Mr. Adair can produce, and I challenge him to produce it, will he show in the final cost that that $506.19 has been raised one cent [fol. 2263] because this figure represents the out of pocket expense. In arriving at those figures, 75% in round figures and for other expense, not for fuel or train enginemen. That is where you are absolutely wrong. The expenses are computed upon the ratio of these same out of pocket expenses of the system to the total haulage expenses. In other words, out of pocket expenses represent only 25% of total haulage expenses, and the other haulage expenses embrace many other accounts, in your operating expenses other than these eight accounts.

Now, what I am doing in that expansion, as Mr. Adair uses it, is not to increase these accounts by accounts, but to add to them that 75% reflected by the other accounts of these eight accounts. Now, that is no expansion. In other words, under Mr. Adair's assumption I could increase the

charge of train enginemen for $506.19 by dividing that by 25 and multiplying by 100 and you would have something like $2,000.00 and that is absolutely rediculous. I don't increase it one cent.

Q. Is not the thing later to which you add 75%, of which you take 75% to make that computation, the same $2,398.55, the total out of pocket expenses, yes or no?

A. No. I might explain this to you. If you take every one of the haulage primary accounts and set them down individually and accumulate them you will find that the aggregate of these, including these eight accounts, is some $6,200,000. I am just using approximate figures. Now, that is the total haulage expense and that is developed by taking all of the primary accounts, not these eight accounts, [fol. 2264] but all other primary accounts indicated. Now, you come down to a group of accounts, 392 to 402, and we will ring those, and we will add up those eight accounts and we find they made $6,200,000 out of twenty million dollars, or whatever it may be, out of grant total haulage expenses. They are the same accounts for the system that this $2,398.55 is for the Hines to Palatka movement. Now, what I did, I withdrew this six million dollars representing these accounts from these total expenses and I found that represented in round figures 25% of the $25,000,000. Now, when I say these other accounts not listed above and below these particular accounts, they are the accounts that are not included in the out of pocket expense. Now, what I am doing I am entering these other accounts, I am not adding these accounts back again. In the total haulage expenses, $25,000,000 I find these segregated out of pocket expenses represent approximately 25% of the total. And if they represent 25%, and I have developed that as correct, then if I divide that by 25 and multiply by 100, I produce my $25,000,000. If I divide this out of pocket expenses by 25 and multiply by 100 I come back to the $25,000,000.

Q. Is not the thing which you are dividing in this instance by 25 the $2398.55?

A. What I am dividing is that figure, but when I am doing that it is for the purpose of adding in these other accounts, not to increase these accounts, but to bring in the accounts not represented by the $2398.55. I can prepare a [fol. 2265] statement by primary accounts showing the aggregate of these total haulage expenses, which we say will

equal $25,000,000, and then I will block off, and as I have done here, ring these certain out of pocket expenses, because we can specially allocate them. Here are certain accounts above and below that are not reflected in there, but are in the totals. It is axiomatic to me, clear as a crystal, that if those accounts represent 25% of your total and you divide that by 25% you don't inflate these other accounts, but add the other accounts that are not embraced in there.

In the illustration I gave, the 25 million dollars includes the six million dollars used in the same illustration. Here is the case. I have in the case of the system the actual figures by primary accounts, by every single account making up this 25 million dollars, but I have not the account of the trainload movement from Hines to Palatka. The only possible way to get that in and add to these expenses these other accounts is to find the relation to the system's same accounts I use here to the total expense and I find they are 25% of the total and it is a simple mathematical proposition or calculation to divide the percentage into $2398.55, and add to those figures above and below it to get the total haulage expenses. (P. 930-B of Tes.)

Yes, there is in this total of $2,398.55, the sum of $282.17 for five mills per ton mile for the Hines to Palatka movement. After you divide $282.17 by 25 and multiply by 100, you would have $1,028.00, but that is not what I did in this [fol. 2266] calculation. That figure is the maximum amount in my accounts for fuel, Account 394, fuel for train locomotives, $1,138.49. I never raised that one cent.

Turning back to my Exhibit 23, I find that 490 loaded cars of logs moved in that Hines to Palatka movement in that month of November 1930. Dividing $1,028.00 by 490 it would be about $2.30.

"Q. So then is it not a fact that as a result of your having included in that total this item of $282.17 and having thus increased the total out of pocket expense to that extent, the estimated cost for transporting logs from Hines to Palatka has been increased $2.30 per car?

"A. Absolutely and definitely no."

If we use my second ratio, the one which I have used in Column B of all of these exhibits, which I have expressed as including total haulage expenses, and take that $282.17 and expand that by my Column B ratio for all hauling ex-

penses, which was $19.0606, but I will use 20 just for the sake of illustration, it will produce $1,410.80. If I divide that sum by 490, which is the number of cars moving in the Hines to Palatka movement in that month of November, 1930 that will produce something less than $2.80 a car, but it is an absolutely wrong figure and fallacious calculation. I have tried to explain that no one of these accounts or items are increased one cent. In other words, your Honor, he would have you believe it increased account 392, train enginemen from $506.19 to $2,530.00. If it is applicable to $282.17, it is applicable to $506.17. It is absolutely the same principle.

[fol. 2267] You are absolutely wrong in your calculation because as I have said, this $506.19 is every cent I have included for train enginemen. I challenge Mr. Adair to show me where any of these eight accounts has been increased one cent by my method of calculation and I can prove to any reasonable man that he is absolutely wrong, and I will demonstrate it to Your Honor before I leave the city.

By adding in these five mills per ton mile for the Hines Palatka fuel, I have included in my total out of pocket expenses the amount of $282.17 as a proper charge of five mills per ton mile for handling coal from the mine to the Florida State line. Now, I might properly have gone further than that. I could have added some 84 dollars more to this to determine the costs in handling the logs, by adding $81.36 to the $282.17 to the point where the coal was used for the purpose of this train movement. I didn't include that. That was left out, but I would be fully justified in including that in determining a cost. When you are developing your study you must assign to the subject you are studying, all of the elements of cost that properly belong and otherwise you most certainly do not produce all of the costs and you understate them. That figure, total out of pocket expenses which amounted to $2,398.55, which I used as a basis of computation was divided by 25 and multiplied by 100 to ascertain our total haulage expenses and the total of all freight expenses.

[fol. 2268] The divisor was 19 plus and in so doing, I didn't increase these eight accounts one cent.

It is not a fact that every time a dollar is added to our out of pocket expenses that three additional dollars are

added to that total haulage expenses. Of course, a dollar divided by 25 and multiplied by 100 produces four dollars.

If these five mills were not added to the Hines-Palatka fuel I would be compelled to have reduced the out of pocket expenses for the system in comparison to this by the amount included in there for the cost of handling fuel over the system, which is all reflected in the system figures. Now, there is no way to get out of that. It is an absolute impossibility. The way to make them comparable was to add this like amount to the fuel here, in order that the relationship of this out of pocket expense to the total haulage expense might be applied to this comparison of out of pocket expense. Nobody claims that we are able to haul all of our fuel in all of the other divisions outside of Florida for nothing. It is absolutely not a fact that we have already, by this expansion raised up Florida by virtue of the expansion itself a portion of the total transportation of fuel. If I had not included it in the system out of pocket expense, my ratio would not have been 25 (P. 935 B of Tes.), but it would perhaps be 20. At any rate it would have been lower. I wouldn't have had as much expense. This six millions of dollars for the system would be reduced and consequently the relationship of the six million dollars which we will [fol. 2269] assume was dropped to four million dollars, the per centage relationship of out of pocket expense to total haulage expense would necessarily have been less than 25% and would have increased this $2398.55 by dividing it by a lower figure and multiplying by 100, which I have done in my calculation.

Redirect examination.

By Mr. Alston:

"Q. Mr. Lamb, in the Commission's report, dated June 9th, 1932, 186 I. C. C., at page 184, the Commission says:

"Coal is charged to the operations in Florida at the average system cost, notwithstanding a substantial haul from the Alabama, Virginia, or West Virginia fields to that State is involved. The portion of the road in Florida, it is claimed performs no like service for other parts of the system."

Is it true that the portion of the road in Florida performs no like service?"

"A. Yes, sir; not to any appreciable extent. I would say that they perform a two per cent like service for the balance of the system."

No, there are no coal mines in Florida. The Commission had before it the same out of pocket expense statement that I have here at the time it made its report.

"Q. And in its report the Commission had those matters in view and made the ratio for the Hines to Palatka movement 6.5 cent per 100 pounds?"

(Objection by Mr. Adair.)

"A. The report speaks for itself. Yes, not over 120 miles and over 100 miles, 6.5 cents. The net improvements and betterments in Florida has no relation to the net of these accounts for the system as a whole from 1917 to 1932."

[fol. 2270] As indicated by Mr. Willoughby, in the accounts he checked out for developing the actual relationship it developed that they were greater. That the increase had been relatively greater in Florida than on the balance of the system because he showed from one or two accounts that the increase over the 1917 relationship was over 100%. I spoke of railroad lines holding to its own line freight, which it had received as long as possible. I mean to hold it as long as it is considered to be the proper treatment of the traffic, that is, not to indirectly route it beyond the tariff allowance of the Interstate Commerce Commission and also to the point of efficiency of operation.

When a carrier takes traffic and holds it to its line, I think it is actually on the routes established and filed by the Interstate Commerce Commission.

[fol. 2271] J. W. Perrin, being sworn for the defendant testified as follows:

Direct examination.

By Mr. Alston:

I testified before in this case and my qualifications have been heretofore stated. I am freight traffic manager of the Atlantic Coast Line Railroad. I have been in attend-

ance at all of the hearings in this case before the Commission in this Restitution proceeding wherein evidence was taken. The Brooks-Scanlon Corporation, the Wilson Lumber Company, the Wilson Cypress Company, the State of Florida and the Florida Railroad Commission have all been represented.

Q. Will you please make a statement as to the evidence, as to the plaintiff's side of this case?

A. I would like to state in the interest of order and simplicity, what I conceive to be the purpose and intent of the testimony presented by the claimants and to outline for the Court in a definite way what will be the line of my testimony, in order that I may not be slowed down and in order that a clear idea can be gotten of the testimony. Now, my understanding of the testimony——

Objection by Mr. Adair to the witness testifying as to what his understanding is of other witnesses' testimony.

My testimony will be to the following general effect: 1st, that there are other figures that go into the consideration of reasonableness in a rate or charge over and above the mere question of what the service costs; 2nd, that a rate or charge is not reasonable merely because of any effect upon the shipper's property investment, or because it may cause an investment loss to the shipper; 3rd, that the ap- [fol. 2272] plication of various rates as between train loads and less than train loads, is illegal and discriminatory; 4th, that there is no legal compulsion upon a railroad company to meet competition by reducing rates that are in and of themselves reasonable; 5th, that while comparison of rates of The Atlantic Coast Line and of other rates of other railroads is there for the test of reasonableness it has no bearing unless the circumstances and conditions surrounding the transportation are taken further into consideration; 6th, that the tariffs filed by the claimants showing rates that apply to a car regardless of weight have little scope of application, and furthermore were not contemporaneously in existence during the period which I refer to hereafter as the restitution period; 7th, that many of the tariffs filed by claimants as containing rates to specific destinations and applicable per car, regardless of weight, contain other rates that tend to support the level of the scale which I will refer to hereafter as the I. C. C. scale, and

that scale is the scale charged on the logs now in controversy, as ordered by the Interstate Commerce Commission; 8th, that the tariffs filed by claimants having effective dates of prior to, during and after the two year period are so fragmentary in their scope as not to be a guide of reasonableness for any general system of log (P. 940 B of Tes.) rates; 9th, that tariffs filed by claimants comparing logs rates with rates on other commodities, are so limited in their scope that they serve no useful purpose in reaching a conclusion as to what reasonable log rates may be; 10th, that the tariffs that I will file contain rates of practically all important railroads that transported appreciable volumes of logs during the restitution period, and contain rates that substantially sustain the I. C. C. scale.

[fol. 2273] That is the resume in advance of what I may be expected to testify to.

I first will present to the Court certain information derived from our analysis of the claims here in question. I thoroughly analyzed the claims, with the following results:

Total number of cars, 18,946.
The average loading was 56,471.
The average haul was 81.2 miles.
The number of cars overloaded was 505.
The number of cars underloaded was 632.
The number of cars in trainloads was 10,078.
The number of cars in less than trainloads was 8,868.
The number of cars in train loads represented 53.2% of the total, and in less than train loads 46.8% of the total.

In examining these claims we found several cars destined to points on the Florida East Coast Railway, which upon investigation proved to have covered the movement of piling consigned to the Florida East Coast Railway, properly subject to lumber rates, and the freight charge on these cars was paid by the Florida East Coast Railway. The information that I have given applies to the claims representing what is before the Court for restitution.

Formerly, the Atlantic Coast Line Railroad itself had several operations of log trains at rates applicable on a lower basis than the rate per car that went in smaller loads,

in less than train load lots. That condition continued until 1917 when those trainload rates were required to be cancelled by the Interstate Commerce Commission for the reason that they constituted discrimination in favor of those who would ship in trainloads as against those who could not made a trainload shipment.

[fol. 2274] At this point I want to file as defendants' exhibit No. 10-B, a certificate from the Secretary of the Interstate Commerce Commission, containing extracts of tariffs and showing decisions of the Interstate Commerce Commission bearing upon the matter of car load vs. train load rates, and condemning the difference in the charges on one as against the other. The references in this exhibit are all that we find that bear upon the subject but there are some five or six pages of the extracts that indicate that the same matter has been before the Commission in many, many instances. I offer this as defendants' exhibit No. 10-B.

Objection by Mr. Adair to the admission of the document on the following grounds:

"That the document purports to contain only isolated extracts of the particular opinions and reports of the Interstate Commerce Commission.

"That there is nothing to show that the circumstances there involved have any relation to or bearing upon or are similar to the circumstances here involved.

"That the matter sought to be proved is incompetent, immaterial and irrelevant."

Argument on objection (P. 944 to 952).

Court: That, of course, goes in subject to your objection, which will be determined in my final report.

Mr. Perrin, continuing:

Just let me add that that exhibit contains the findings of the Interstate Commerce Commission in seventeen separate cases, all ruling to the principle. These rulings speak for themselves, all running to the point that the discrimination between trainload shippers and less than trainload shippers is illegal. Now, in my own knowledge, the move-[fol. 2275] ment of coal, bananas, live stock, ores and petroleum products are frequently and largely in train load

quantities, and yet there is never an attempt on the part of the railroad to establish a lower rate per car on any of these commodities by reason of the fact that they move in train loads, lower than the charge on a single car of those commodities. I also want to add the thought that Mr. Alston advised that this case would not have been before this Court but for the fact that the Florida Commission in construing the law of Florida as to what could be legally done, or what would be illegal.

Objection by Mr. Adair.

The record is this that the Florida Commission instructed the Atlantic Coast Line Railroad to eliminate the train load tariff unless it should be made to apply equally to a single car anywhere in the State of Florida. If they had permitted us to do so we would have been still hauling in trainloads under the contract. As long as the contract lasted we would have carried it out. The Florida Commission required us to eliminate trainload shipment for the reason that you cannot legally charge a shipper a lower rate per car in a trainload than the smaller or another shipper on single carloads. A lower commodity rate from one point of origin to one point of destination within a state than the rate as charged from some other point of origin to some other point of destination within the same state under the same circumstances and conditions would be illegal.

[fol. 2276] Q. Assuming the conditions and circumstances are different—for instance in one case the movement is very heavy, continuous and daily movement, we will say a carload movement and very heavy, continuous and regular car load movement between points A and B, whereas between points C and B the movement may be irregular and isolated. There is nothing illegal about that?

A. Yes, sir.

Q. Even though the greater density of movement is not a matter of circumstances?

A. The large volume of the movement of a commodity might be a factor in depressing the rates on that commodity as a whole, but the volume of the movement of a certain commodity which one shipper makes from one station to another station, and the rate cannot be lower because he has a larger volume of that commodity than some other ship-

per. We have point to point rates that are lower on the same commodity in the same territory but only under competitive influence. Now, I want to mention next a theory that seems to have been advanced that the reasonableness of a rate or charge is established or is in some way connected with the loss in property investment that might result in a change in that rate. We had testimony about the losses in property investment due to the establishment of the I. C. C. scale in Florida. The Atlantic Coast Line Railroad and no other railroad that I know of would willingly make any change in a rate that would be hurtful in a large way to a patron of its railroad but there are circumstances under which a rate must be changed.

[fol. 2277] Our experience in the rate-making business is that rates must be made reasonable regardless of property investment losses. Again we have the authority of the Interstate Commerce Commission for that principle of reasonableness in making freight rates.

Mr. Adair: Your Honor, I want to advise Mr. Perrin, through your Honor, and ask him not to quote that Commission in this case without producing the document from which he is quoting.

Mr. Perrin: I am proceeding now to file as an exhibit what the Interstate Commerce Commission says. I will file it as defendants' Exhibit 11-B.

I offer this document in evidence which contains extracts from reports of the Commission concerning these decisions and which is under the certificate of the Interstate Commerce Commission.

Court: He seems to have a number of exhibits there and, Mr. Adair, I wish you would consider you have made objections to them and then, if you wish, at the end of all of it you can make specific objections to same.

Mr. Adair: When I make my objection I will ask Mr. Capers to then note the same objection I thus make as to the others.

Same objection by Mr. Adair as was made to defendants' Exhibit 10-B.

(Witness continuing:)

I will read one of these decisions and all are to the same general point. In Number 6685, I. C. C. Docket, Crawford

& Bunce, et al. vs. Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, et al., reported in 32 I. C. C. 1214, the Commission made the following finding:

[fol. 2278] "While we always give due weight to the fact that business has grown up under a particular rate adjustment, shippers have no vested interest in the maintenance of existing rates by reason of investments made under those rates which precludes increasing the rates if they are unreasonably low."

I also quote another finding from I. and S. Docket No. 256, Chattanooga Log Rates, 35 I. C. C. 163-168:

"However reluctant the Commission may feel to sanction changes in rates which tend to impair or destroy the value of investments made in expectation of their continuance, it cannot on that ground deny to carriers the right to charge rates which are just and reasonable."

Motion to strike the quotations by Mr. Adair.

The next line of my testimony will deal with the contention that other railroads have reduced rates on logs and the rates of the Atlantic Coast Line Railroad thereafter becoming unreasonable merely because of comparison, I assume. My contention is that unless the conditions are the same and unless the Atlantic Coast Line Railroad should bring about discriminations by reason of its own act, the Atlantic Coast Line has no legal responsibility to reduce reasonable rates merely to meet the acts of another railroad. In the first place, such a contention would mean that the management of the Atlantic Coast Line Railroad would be to a large extent in the hands of other railroads whether those lines be responsible or even competent as we would view competency or responsibility. By that I mean to say that because the Georgia & Florida Railway for instance in the exercise of its managerial wisdom established certain rates on logs is no reason why the Atlantic Coast Line should do the same thing or establish the same rates or rates as low. As long as the rates of the Atlantic Coast Line are reasonable the act of another carrier cannot affect the legality of the Atlantic Coast Line rates. Another thought in that connection is our management reserves to [fol. 2279] itself decisions as to its policy and must con-

tinue to do so until some unreasonable act is committed or an unlawful rate is made.

I offer a certificate from the Secretary of the Interstate Commerce Commission containing extracts from reports of the Commission as defendants' Exhibit 12-B.

Same objection by Mr. Adair as was made to defendants' Exhibits 10-B and 11-B.

A certificate from the Secretary of the Interstate Commerce Commission containing extracts from reports of the Commission dealing with motor truck competition was offered in evidence as defendants' Exhibit 13-B.

Same objection made by Mr. Adair as made to defendants' Exhibit 10-B. (Page 960-B of Tes.)

Now, I come to the question of reasonable rates. Evidently from expressions of attorneys for claimants, they are not in accord with the testimony of the witness, Mr. True. Mr. True has given in the record what I believe very nearly and very accurately states what constitutes reasonableness in a rate or charge. He listed the following factors to be considered. What the traffic will bear, the volume of the traffic, the cost of the service, the value of the service to the shipper, the competition between carriers and of other means of transportation, a return on the property of the carrier, the absence of discrimination and the [fol. 2280] proper contribution to what is necessary to produce 5¾% return to the carrier.

Mr. Adair: Your Honor will understand, of course, that Mr. Perrin is putting his own construction on what Mr. True has stated. Mr. True's testimony is there and it seems to me very unusual for one witness to construe what another witness has said.

I have read in the record what Mr. True testified constituted reasonableness. Now on the scope of cost of the service, I am sure it is readily apparent that there is no power short of the supernatural that can tell what the cost of the service is with exactness. Mr. Lamb has not attempted to do it, and nobody can do it. I don't know what Mr. Saunders tried to do but I do know that neither Mr. Saunders nor anyone else can tell what a particular service cost. Certainly they cannot establish definitely as a basis for

reasonable charge what that charge is. In my opinion the cost for the service is more valuable if it can be found even approximately as indicating whether or not the service performed is at such a loss as to make the charges confiscatory. You can approximate the cost sufficiently to show whether the revenues may be enough to cover the cost of the service but you cannot establish reasonableness based upon the cost of service only. All of these other factors that go into reasonableness must be taken into consideration. As a practical matter the cost of the service cannot become the basis of a reasonable charge because the result would be revolutionary and destructive for the traffic of the country. I will mention canned goods, for instance, to illustrate what I have in mind. Loaded to the same weight per car as low [fol. 2281] grade traffic such as logs it will be handled at the same cost as the logs would be handled because it takes no more to haul forty thousand pounds of canned goods than it does forty thousand pounds of logs and the only difference is in the minor difference in cost of insurance in the higher value of canned goods. Now if the cost of service should be the basis, and the sole basis of establishing reasonableness of charge, it goes without saying that the charges on low grade traffic would be so substantially increased, and the charges on higher grades of traffic would be so substantially reduced as to revolutionize the traffic of the whole country and would substantially kill the traffic in the lower grades.

I have an exhibit in which the same expression is given in the decision by the Interstate Commerce Commission which I will mark as defendants' Exhibit 14-B.

I introduce this certificate of the Secretary of the Interstate Commerce Commission covering extracts from the reports of the Commission as defendants' Exhibit 14-B.

Same objection made by Mr. Adair as was made to defendants' Exhibit 10-B.

I would define a reasonable rate as non-discriminatory and one which permits the traffic to move without restraint and takes into view the value of the service to the shipper and produces a fair and reasonable return to the carrier including return upon the property devoted to the service and a fair share of the revenues needed to maintain the transportation system.

[fol. 2282] Now, I would add that a rate is not unreasonable merely because the shipper does not make a profit from his business under that rate and I want to file another exhibit expressing the thought of the Commission on that feature.

I offer extracts of decisions under the certificate of the Secretary of the Interstate Commerce Commission as defendants' Exhibit 14 H.

Same objection by Mr. Adair as was made to Exhibit 10 H.

Now, I come to the consideration of claimants' exhibits 52 A to 62 A which embody those trainload rates and trackage right arrangements with the Atlantic Coast Line Railroad to which we referred a short while ago. Now, first I will address myself to the three instances in which the Atlantic Coast Line itself performed a log train service. The first contract referred to being with the Dill-Cramer-Truitt Corporation shown in exhibit 52-A, which was made on October 31st, 1913, and discontinued in 1918. Under that contract the rate from Dixon and Verona, North Carolina, to Suffolk, Virginia, was $4.75 per thousand feet. We had the same contract with the Eureka Lumber Company, Exhibit 55-A, which was made December 15th, 1915, and was discontinued about four years ago, I think about 1928. The contract was cancelled by the discontinuance of the service but there was no formal cancellation of it. There was an element of water competition there as to the operation of the contract from its inception (P. 965-B of Tes.). The last movement under that contract was sometime in 1928. I do not know what month it was but I can get that when I get home. This is an operation of five [fol. 2283] miles and there was water competition. Another contract with the Jackson Brothers Company, claimants' Exhibit 56-A was made in July 1908 and abandoned in 1920. The rate from Fairmont, North Carolina to Whalleyville, Virginia, was originally $3.80 per thousand feet. Incidentally, all of these contracts carry the obligation to route the lumber via Atlantic Coast Line. Now, the purpose of having Mr. Sibley and Mr. Brown testify as to the cost of operation, wages, materials and supplies that go into the operation of trains for the years 1908 through 1913 and 1930 was merely to indicate that a comparison of

the rate in 1930 with the rate in 1908 or 1913, or at any time prior to 1918, means nothing at all. In other words, if your expenses are doubled in 1930, it means nothing to say that your rate in 1908 was one-third or one-half of the rate in 1930. In other words you couldn't possibly make rates in 1929, 1930 and 1931 on the basis of costs as they then existed in relation to the rates that were made in 1908 and 1913. None of these contracts to which I referred and which are in the record as claimants' Exhibits 54-A, 55-A and 56-A, were in force during the restitution period.

The next Exhibit 53-A is the trackage right agreement with the Overstreet Crate Company. In the analysis made of that exhibit by claimants, the haul of logs under that trackage right was represented as some forty-odd miles. That, however, is merely the total of the distance of several hauls that they were required to make north, south, east or west and it does not mean that they ran a train forty or forty-five miles over the railroad. The measurement here was 20.3 miles for the maximum haul with a rate of $1.50 per thousand feet. That rate was made in June 1913. The Atlantic Coast Line received for the main trackage right 55% of the gross revenue accruing under the rate of $1.50 [fol. 2284] per thousand feet. Now, I might say here in connection with this trackage right that there is no more involved as a matter of expense to the railroad, than the wear and tear on the track and for short hauls, such as involved in all of these trackage rights, it is much more economical from a net revenue standpoint to allow the shipper to conduct his own service if we can get anything like 55% of the gross rate for the mere use of the track. A short haul involves a heavy expense for train load operation and the revenue derived from this short haul where you have to employ a train crew for the performance of a trainload service is not sufficient to cover the operation of a log train with a short haul. On the other hand, many of these plants cannot operate on the limited supply of logs they would obtain by using mere train service. We found that the volume of some of these movements was so great that they had to be handled by train service. In the case of the Overstreet Crate Company we had to operate a full train crew. To operate a train crew in there on the level of the minimum we have to pay the crew, we wouldn't have gotten anything like the amount of net revenue that

we got under the trackage rights. I make that general statement with reference to the several trackage arrangements which are for short hauls. The Overstreet Crate Company's trackage rights expired on May 13, 1917, when the mill was burned.

I will next discuss the trackage rights with the Conway Lumber Company, Exhibit 54 A. That was a trackage right for the operation of the Lumber Company for a distance of 16 miles at the rate of $1.75 per thousand feet, es- [fol. 2283] tablished in 1915 and cancelled March 19th, 1922. The line from Aynor, South Carolina, to Conway, South Carolina, over which they operated originally had no train service at all and the expense of operation of a special train by the Atlantic Coast Line would have been proportionately as great, if not greater than the gross revenue derived from the traffic.

Exhibit 57 A is a similar arrangement with the Giles Bay Lumber Company, Robins Neck, South Carolina, to Florence, South Carolina, made June 15th, 1918 and abandoned December 1922, a distance of 16 miles.

The next two exhibits are 58 A and 59 A, one being with the Enterprise Whiteville Lumber Company, Bowden, North Carolina, to Interprise Siding, North Carolina, a distance of nine miles, which was made in December 1921 and abandoned in July, 1925. The second being with the Montgomery Lumber Company, from Berbam, North Carolina, to Spring Hope, North Carolina, 19 miles, which was made January 9, 1925, and cancelled on April 30, 1928. With respect to this arrangement not only was it more economical from the standpoint of the railroad, which otherwise would have had to operate a special log train on the branch referred to but was a part of an arrangement under which the Atlantic Coast Line acquired the line that formerly belonged to the Lumber Company and operates it at this time.

Exhibit No. 60-A is a traffic right agreement with the Brooklyn Cooperage Company which was made July 24, 1926, from Greeleyville, South Carolina, to Sumpter, South Carolina, 32 miles, and from Remini, South Carolina, 20 miles, and that contract has never been put into operation. It is still in effect but has never been used.

[fol. 2286] Exhibit 61-A is an agreement by the Live Oak, Perry & Gulf Railroad made for the purpose of establish-

ing routing arrangements on all traffic originating on the Live Oak, Perry & Gulf railroad, as a part of an arrangement of sale by which the Atlantic Coast Line sold its interest in the Live Oak, Perry & Gulf Railroad.

Exhibit 62 A is a trackage right arrangement with the United States Sugar Corporation for the movement of sugar cane to Clewiston, Florida from points intermediate to Lake Harbor, Florida, a maximum of forty miles. Now, it has been testified that the United States Steel Corporation had purchased flat cars for this service. Ordinary flat cars or any cars that the railroad owns are not sufficient for the purpose of handling sugar cane and the sugar company buys these cars and equips them in a manner necessary to handle that particular class of traffic. That contract is still in operation. The Live Oak, Perry & Gulf contract, claimants' Exhibit 61 A is also still in effect today.

I am going to say this with respect to certain log rates that have been filed in this case as representing the charges on logs in the State of Texas and the Southern lines. First I want to file an exhibit which deals with the question of using interterritorial rates as the measure of reasonableness as defendants' Exhibit 16-B.

I offer as defendants' Exhibit 16-B, under certificate of the Secretary of the Interstate Commerce Commission extracts from reports of the Commission therein described.

[fol. 2287] (Same objection by Mr. Adair as was made to defendant's Exhibit 10-B.)

This exhibit is the expression by the Interstate Commerce Commission as to the fact that the proper and best measure of comparison in order to test reasonableness is within the same territory, and it is very logical that that should be true because if we should go to the East or Middle West or Northwest to compare rates in those territories with the rates in Florida, we would find much higher rates than would be necessary.

(Objection by Mr. Adair that the witness ought not to testify about what would be found in the Northwest and the West unless he submits the tariffs.)

If you object to the mere statement that these rates in the Middle West are so and so in this case, when the Com-

mission made the rates in these territories 65% of the lumber rates, now by any comparison at all those rates would show that the I. C. C. scale is lower.

(Motion by Mr. Adair to strike the last statement.)

In this hearing I am not going to submit any comparisons with Eastern or Western rates. Such comparisons as I make are going to be with Southern rates, and I don't want you to think I am trying to take an unfair advantage of you because what I say about rates in other territories is already in the record.

We have had a series of tariffs filed by witnesses for the claimants, witnesses True and Green. For the purpose of my analysis I have divided these tariffs into three classes. The first class being the tariffs that carry rates per car [fol. 2288] regardless of weight. The second group of tariffs contains rates per one hundred pounds or per thousand feet, or per car of a designated weight, and the third group of tariffs contains rates on commodities other than logs, such as pulp wood and waste wood and the various and sundry commodities.

I offer in Exhibit 17-B, a tabulation of tariffs filed by the claimants as applicable per car regardless of weight. For convenience I have given my own item number to each one of these tariffs or supplements because in numerous cases there are several tariffs or supplements in the same exhibit. By item numbers I mean the numbers in the first column of these exhibits. I have numbered these items consecutively so that reference to the item will mean a reference to the tariff. Now, Item 16 and 17 are not applicable on pine. Item 14 is a duplicate of item 9. Items 21 and 23 compare no rates. In other words, these items cover supplements that were issued for such reasons as average emergency charges or charges on receivership or such as that. Item 6 is embraced in Item 8, so far as the rates are concerned. Now, there are left 29 tariffs or supplements. Of this total number of 29 tariffs or supplements 22 show dates of expiration, indicating that particular change to meet truck competition. 22 are subject to transit and 26 are restricted to apply only to specific destinations and 25 were issued to become effective as late as 1932 and 1933. The only rates of this character, that is rates per car regardless of weight, that were in effect during the restitu-

[fol. 2289] tion period are the rates of the Mississippi Central Railroad to Bude and Hattiesburg, Mississippi, in Item 15; the rates of the Kentucky & Tennessee Railroad to Hemlock, Kentucky, Item 31; the rates of the Bonhomie and the Hattiesburg Southern to Beaumont, Mississippi, Item 33. Incidentally, the last three tariffs cover tariffs that apply for maximum distances of 20 and 27 miles, respectively. Item 29, Seaboard Air Line Railroad to St. Marys, Georgia, was in effect during the restitution period. That is for a distance of less than 20 miles. I think about 12 or 15 miles. I would like to call attention to the fact that 26 of these 29 tariffs are applicable to specific destinations. They are not always applicable from all points of origin to that destination. Sometimes they are on a mileage basis to a certain destination and sometimes point to point rates. At the footnote I show as follows: "Claimants' Exhibit No. 9-A contains several certificates from J. C. Hendley that certain tariffs on file with the Tennessee Railroad Commission contain certain rates, but no information is given to show dates issued or filed or the conditions under which the rates applied. However, reference in the certificates are made to tariff numbers that indicate the claimants' exhibit No. 9-A is largely a duplication, as follows:" and then I show reference to eight tariffs filed as the tariffs of individual railroads comparing with Items 4, 5, 6, 7, 8, 16, 17 and 27. The N. C. and St. L. Railroad has those rates applicable generally over all lines but I don't find that this is shown in claimants' exhibit. Claimants have put in a certificate from Mr. Hendley that certain rates were in effect.

[fol. 2290] Mr. Adair: As a matter of fact it is applicable over the entire system of the N. C. & St. L.?

A. I think so. I call your attention to the fact that in Item 12, you deal with a supplement to a log tariff applicable on N. C. & St. L. in Alabama.

Mr. Adair: I think you will find the N. C. & St. L. tariff was filed. I think there were some additional tariffs filed before this order of re-reference was made. There were a number of tariffs filed before the Master upon the original reference and before the order of re-reference was made. Did you include those tariffs in this list or confine yourself to tariffs filed on the order of re-reference.

A. It is the order of re reference. I did not include the tariffs filed on the original reference. I assumed that the testimony and exhibits that were put in in the two Atlanta hearings and Jacksonville hearing, constituted the whole showing as to these rates (P. 975-R of Tvs.). Now, I will add this statement. That there were presented to the Interstate Commerce Commission at the last hearing in November 1932, the same tariffs as are here covered by Items 1, 2, 3, 4, 5, 6, 7, 9, 12, 14, 19, 20, 22, 23, 24, 25, 26, 27, and 28. These items are items on my exhibit 17-R. These tariffs which I have just described as being in certain items of 17-R were before the Interstate Commerce Commission when it made its last decision on this subject. There was testimony by witnesses for the claimants as to the almost entire covering of the log traffic by the rates that have been issued by these tariffs southwest, on a basis of [fol. 2291] per car, regardless of weight. To indicate that that statement is not correct I offer as Exhibit 18-R, under the certificate of the Assistant Secretary of Commerce, and the Director of the Census, a copy of the preliminary report issued December 20, 1932, entitled "Census of Manufactures, 1931, Timber Products and Lumber," which were compiled from original records of the Bureau of the Census.

I next offer defendants' Exhibit 19-R, which is an analysis of Exhibit 18-R, with respect to ten Southern states showing the number of mills operating the soft wood products, the hardwood products and the total products by states. It shows that 44% of the production was in Virginia, North Carolina, South Carolina, Georgia and Florida, in the absence of rates per car regardless of weight, and that 56% of the production was in the remaining five states within which the application of rates per car regardless of weight was limited. Furthermore, the exhibit shows that the percentage of production in Florida consisted of 67.2% of pine, 25% of other soft woods, and 7.8% of hard wood. This Exhibit 18-R covers the year 1931. It relates to the whole state as distinguished from the Atlantic Coast Line Railroad. It is not a fact that the record shows that our total revenue for the transportation of logs for 1930 was only about five thousand dollars. If it does so show it is wrong. I can not tell what this revenue for 1930 was but I know it is many, many times five thousand dollars. It [fol. 2292] was more than that for the transportation of

pine logs in 1930 and in 1932 even, and in 1932 it was getting down pretty thin. I will say in 1933, up to this time, it exceeds five thousand dollars.

I offer these exhibits previously described as defendants' Exhibits 18-B and 19-B.

Same objection by Mr. Adair as was made to defendants' Exhibit 10-B.

I want to take up next the analysis of some of the tariffs included in my exhibit, in my list of tariffs filed by claimants to my Exhibit 17-B. I am going to file an exhibit comparing the I. C. C. Scale with rates contained in the tariffs shown in my Exhibit 17-B, as filed by the Commission. I first offer as defendants' Exhibit 20-B, a tariff which states that the Illinois Central Railroad, I. C. C. No. 7780, which is Item 1, on my Exhibit 17-B, contains transit rates per car regardless of weight on logs from Gulf and Ship Island railroad stations to Jackson and Laurel, Mississippi, but also contains a mileage scale of transit rates per one hundred pounds on logs to all other destinations and from all stations on that line in comparison with the I. C. C. Scale being shown. It will be noted that the scale in the Illinois Central Railroad's tariff is similar to the I. C. C. Scale, being one half a cent lower for 20 miles, 30 miles and 40 miles, the same for 50, 60, 70, 80, 90 and 100 miles, a half a cent higher for 110 miles, 120 miles, 130 miles, and 140 miles, and the same for 150 miles.

I offer as defendants' Exhibit 20-B, this statement which is headed, "Analysis of Claimants' Exhibit No. 4-A."

Same objection by Mr. Adair as was made to defendants' Exhibit 10-B.

[fol. 2293] I now offer defendants' Exhibit 21-B, which is an analysis of claimants' Exhibit No. 4-A. The Columbus & Greenville R. R. Supplement No. 11 to I. C. C. No. 36, embraced in my item No. 3, in Exhibit 17-B, contains transit mileage scale or transit rates on a mileage scale applicable to Columbus, Greenville, Greenwood, Means, and West Point, Mississippi, applicable per car, but the same tariff contains a mileage scale of transit rates on logs per 100 pounds, applicable to all other destinations from all stations, in comparison with the I. C. C. scale being shown in the exhibit. Now here again the scale of the Columbus

& Greenville R. R. is very closely approximate to the I. C. C. scale, and the Columbus & Greenville R. R. rates are transit rates.

Same objection by Mr. Adair as was made to defendants' Exhibit 10-B.

We next offer defendants' Exhibit No. 22-B, which is headed "Analysis of Claimants' Exhibit No. 6-A." It refers to Agent Spelden's Supplement RRRR to Alabama Commodity No. 318, filed by claimants to show rates on logs per car, regardless of weight, and it became effective October 20, 1932, applicable from Tennessee, Alabama, and Georgia Railroad stations in Alabama to Chelsea, Alabama, a maximum distance of 42 miles. The same tariff contains the rates for one hundred pounds on logs between all stations on the T., A. & G. Railroad in Alabama, which compare with the I. C. C. scale, as shown in the exhibit which, generally speaking, or which throughout shows a half a cent higher rate than the I. C. C. scale.

Same objection by Mr. Adair as was made to defendants' Exhibit 10-B.

[fol. 2294] I next offer defendants' Exhibit No. 23-B, which refers to the Illinois Central Railroad's Supplement No. 4 to I. C. C. No. 7848, applicable to Memphis, and Supplement No. 5 to I. C. C. No. 7748, applicable generally between stations on Yazoo & Mississippi Railroad west of Mississippi River and stations east of Mississippi River and Illinois Central R. R., Yazoo & Mississippi Valley and Gulf & Ship Island R. R. and the tariff contains specific transit rates per car on logs to Tallulah, Louisiana, from Illinois Central R. R. and Y. & M. V. stations in Mississippi and from designated stations on Y. & M. V. to Memphis, but also contain a mileage scale of transit rates per one hundred pounds, applicable to Memphis and all other stations except Tallulah and from Y. & M. V. stations to Memphis, the said mileage scale comparing with I. C. C. scale as shown.

Mr. Adair: Mr. Perrin, do you mean that the new rates, regardless of weight, and this schedule of rates in the left hand column, are by those tariffs shown to be applicable to and from the same stations?

A. No, but they are applicable in a more general sense than the rates per car regardless of weight. In other words, they have more general application between all stations on the line rate than in any restricted cases.

Q. Can you say whether or not the new low per car rates are applicable to manufacturing points as distinguished from stations generally?

[fol. 2295] A. No, they are, of course, applicable to manufacturing points, but a rate that is applicable anywhere is applicable to a manufacturing point.

Q. Suppose that these two rates, the rate per car, regardless of weight, and the mileage scale, were both published applicable to the same station, would not the lower rate be the one used?

A. Of course, but the tariff does not provide that. The tariff provides special application to stations to which the special rate does not apply. There is no conflict, the tariff does not conflict at all. There is no conflict between the two lists at all, they are separate lists of rates.

I offer in evidence exhibit just discussed, headed, "Analysis of Claimants' Exhibit No. 7" as defendants' Exhibit No. 23-B.

Same objection by Mr. Adair as was made to defendants' Exhibit 10-B.

I next tender defendants' Exhibit No. 24-B, which is an analysis of Southern Railway Supplement No. 2, I. C. C. 10448, which is a part of Claimants' No. 8-A. This tariff or supplement contains transit rates per car on logs to Memphis, applicable from Corinth and intermediate stations, a maximum of 94 miles, but it also contains net transit rates per 100 pounds on logs to Memphis from stations east of Corinth, the comparison of rates in the I. C. C. scale being shown. I compared the I. C. C. scale with both the transit rate shown in the tariff and the local rate. Now this exhibit, of course, is for distances in excess of 100 miles. The distances run from 102 miles to 170 miles, which is the limit of the I. C. C. scale. Now under the head of "Transit," the first column of rates, appears a rate of five cents as compared with a rate of 6½ and 7 under the I. C. C. scale. But under the head of "Local Rates" that

have no transit requirement, the rates are from one and [fol. 2296] a half to four cents higher than the I. C. C. scale.

Court: Is that I. C. C. scale the same?

A. Yes, sir; it applies locally as well as where the commodity is reshipped.

Q. When did those tariffs 21-B, 22-B, 23-B, and 24-B go into effect?

A. That information will appear from my Exhibit 17-B.

I offer the statement headed, "Analysis of Claimants' Exhibit 8-A," as defendants' Exhibit 24-B.

Same objection by Mr. Adair.

I next offer as defendants' Exhibit No. 25-B, a statement which is headed, "Analysis of Claimants' Exhibit No. 8-A," which is an analysis of the Illinois Central Railroad Supplement No. 10 to I. C. C. No. 7835, which is a part of claimants' Exhibit No. 8-A. While the supplement contains transit log rates per car to designated Southern points on the Illinois Central Railroad, it also contains a mileage scale of transit log rates per 100 pounds, applicable to all other destinations on the Illinois Central Railroad in the South, a comparison between the mileage scale and the I. C. C. scale being shown on the exhibit. Now, it will be noted that the transit scale of the Illinois Central Railroad follows very closely the I. C. C. scale, being in some cases a half a cent lower, and in other cases a half a cent higher. For 120 miles it is the same, for ten miles it is half a cent less, for 20 miles half a cent less, and 30 miles one cent less. When we get to 60 miles it becomes the same; it is higher at 80 miles, 90 miles, and 100 miles.

Same objection by Mr. Adair.

[fol. 2297] I next offer as defendants' Exhibit No. 26-B a paper which is an analysis of the Yazoo and Mississippi Valley Railroad Supplement No. 2, to I. C. C. No. 7811, which is a part of Claimants' Exhibit No. 8-A, and contains transit rates on logs per car to Vicksburg, Mississippi, and between Y. & M. V. stations in Louisiana west of the Mississippi River, but it also contains a mileage scale of transit rates per 100 pounds on logs between all other Y. & M. V. stations in Louisiana on the Vicksburg Route

Division; also a mileage scale of transit rates on logs per hundred pounds between all stations on the Y. & M. V. in Louisiana on the Shreveport District. The comparison between these two mileage scales and the I. C. C. scale are shown in the exhibit.

Same objection by Mr. Adair.

I have prepared a tabulation of tariffs filed by Claimants that show rates on logs for one hundred pounds or for one thousand feet, or for a car of defined weight, which I offer as defendants' Exhibit 27-B.

Same objection by Mr. Adair.

The exhibit shows the claimants' exhibit number in which the tariffs are included, the tariff reference, the dates effective, the basis on which the rates applied and the location where the rates applied, and I have entered in column 1 consecutive item numbers for convenience with reference to these tariffs. There are 33 tariffs or supplements, of which 19 are transit tariffs, 11 became effective after March 1931, 3 contained expiration dates, one was cancelled in 1926, 3 are embraced in one, and 2 are embraced in 1. I refer to the date after March 1931 because that is the end of the restitution period.

[fol. 2298] In fact, these exhibits while running both prior to, during and after the restitution period, they have been assembled for the purpose of showing rates in effect during the two-year period. I now want to take this up and discuss some of the items at very short length, and I proceed with item 1, which is claimants' Exhibit 1-A, comparing rates per thousand feet on logs from Aucilla and Madison, Florida, to Tallahassee, Florida. This claimants' Exhibit 1-A was not filed in the form of a tariff, although the same rate subsequently appears in the tariff of the Seaboard Air Line Railroad, filed elsewhere by the claimants. In the present instance it is covered by certificate from the Florida Railroad Commission. This rate applied to one destination from two points of origin, whereas the Seaboard Air Line has a scale of rates applicable throughout the entire State of Florida, as prescribed by the Florida Railroad Commission, which I desire to show in Exhibit No. 28-B. Claimants' Exhibit 1-A, showing the two rates from Aucilla and Madison to Tallahassee should not be

taken as the measure of the rates of the Seaboard Air Line in Florida, in view of the fact that the rates for that line are set forth in my Exhibit 28-B. In that exhibit I have transposed the rates of the Seaboard Air Line to basis of weight, so as to compare the rates from Aucilla and Madison to Tallahassee with the I. C. C. scale, and I have shown also in the exhibit the parallel rates to 100 pounds for the Seaboard Air Line applicable for one thousand feet as prescribed by the Florida Commission for general application on the Seaboard in Florida. Now, it is a fact that the Seaboard Air Line Railroad is a large log carrying line and carries large volumes of logs in Florida. My information [fol. 2299] is that there has been no movement of logs from Madison or Aucilla since February 1928.

Mr. Adair: I should be very grateful if the witness would not testify as to what his information is about the movement of logs between particular stations on another railroad since 1928. It seems to me that is exceeding the bounds of any courtesy to sit here and listen to that.

Court: Yes, I think he should not testify to information as to other roads.

This Exhibit No. 28-B shows the mileage from Aucilla to Tallahassee as 34 miles and from Madison 55 miles. That is what the first line means.

Q. And is the shorter distance included in the longer?

A. Why, if you mean that one is a cross section or long and short haul average, that does not exist.

Q. Does the 34 miles from Aucilla include the miles from Aucilla to Tallahassee?

A. Yes, sir.

I offer this statement which is headed, "An Analysis of Claimants' Exhibit 1-A," as defendants' Exhibit No. 28-B. In my conversion of feet per pound I have used ten pounds to the foot or ten thousand pounds to a thousand feet. Some species of logs weigh substantially more than that. Some hardwood logs would weigh substantially more than that, but Mr. True testified that the weight of pine and cypress was ten to eleven pounds per foot and in his tariff claims that he has filed there is a provision of weights per [fol. 2300] one thousand feet, as shown as ten pounds per foot. I recall having taken part in a proceeding before the Interstate Commerce Commission, called the I. C. C.

Investigation and Suspension Docket No. 2905, Saw Mill Logs from North Carolina and Virginia points, September 12, 1927. I testified upon that occasion that our experience from the actual weighing of logs on our railroad shows that the logs weighed fourteen pounds to the foot and some 18, but the theory of weight of logs and actual weight of logs is this, that the bigger the logs are the less they weigh per thousand feet. Now the logs that were shipped in North Carolina were cut as logs of very small dimension, conforming more nearly to the size of telephone poles. I wouldn't say that that is frequently the case in the Carolina points. The pine logs that they use in North Carolina going to Virginia are used by veneer manufacturers for these parts of their crate material and they are not as large as the saw mill logs that ordinarily move throughout the system. The Seaboard Air Line rates are published in the tariff in cents per one thousand feet as distinguished from cents per pound. In the transportation of logs weighing eleven pounds the rate when transcribed into cents per one hundred pounds would be slightly different than this basis of ten poupds per foot, a difference of ten percent and 12 pound logs would be a difference of twenty percent. (P. 990-B of Tes.) I think Mr. True is going beyond his experience in using the weight of 12 pounds per foot.

Same objection by Mr. Adair to Exhibit 28-B as was made to Exhibit 10-B.

[fol. 2301] Now, the next item I will consider 2, 4 and 5, which are tariffs of the Florida East Coast Railway to Osceola, Melbourne, Wabasso, and Osceola again, also Melbourne again. The tariffs in items 4 and 5 were subsequently cancelled by the tariff in item 2. Now there is an intermediate item 3 in the same exhibit, showing rate to Jacksonville, Florida, which I will mention first. That rate was issued May 19, 1932, and has already expired. Now here are the circumstances under which it was issued, and I am stating this from our own record; during the year 1932 there was a very disastrous forest fire, extending practically throughout the whole extent of the Atlantic, South Atlantic Coast. There were points where timbers were burned down to the roots, and the Florida East Coast Railway assisted those people in finding a market for their timber, and put in a temporary rate that would enable them to dispose of the logs at Jacksonville, in order to save the

entire loss of the timber. The fire was immediately preceding the time that this tariff was issued in May 1932. Of course, it lasted for two or three weeks, probably a month. It might have been in the fall of 1931, but it lasted quite a long time. You had the effect of it here in Atlanta. Now they published also a special rate, as shown in items 2, 4 and 5 for these three destinations. Mr. Green, of the Florida East Coast Railway, described at considerable length the situation on the report of the road with respect to the movement of the logs by the Osceola Lumber Company in the years gone by, and I think he indicated the last date on which there had been any movement. However, he [fol. 2302] did state that such as moved were handled under a trackage arrangement between the Florida East Coast Railway and the Lumber Company. Now the Florida East Coast Railway in 1931 had 29 saw mills on that railroad.

Now I offer, as Exhibit 29-B, the scale of rates prescribed by the Florida Commission and applying throughout the length of this line on logs and this exhibit is headed "Analysis of Claimants' Exhibit No. 3-A." In this Exhibit 29-B I do not show the so-called special rates referred to in claimants' Exhibit 3-A, and it is not the purpose of this exhibit to do other than call attention to the Special rate that they made for these three destinations. They have a scale applicable between all other points on that line as prescribed by the Florida Railroad Commission. The same thing is true of these various other exhibits that I have offered this morning. I do not purport to show on my exhibit the scale of rates that the claimants offered upon their exhibit. In fact, your Exhibit 3-A speaks for itself.

Q. You spoke a moment ago about there having been 29 saw mills on the line of the Florida East Coast Railway. Do you know whether any of these saw mills got their logs by common carrier?

A. No, sir; I don't know whether these rates to Melbourne or Osceola moved them or not. Melbourne, Wabasso and Osceola are all manufacturing points. They are included in the list of 29 miles on the Florida East Coast Railway.

Same objection by Mr. Adair as was made to the previous exhibits.

[fol. 2303] On our Exhibit 29-B the rates are shown first as the Class P rates per thirty thousand pounds as prescribed by the Commission and applied by the Florida East Coast Railway. I have directly converted to a scale of rates per one hundred pounds and I have shown that in comparison with the I. C. C. Scale. That comparison perhaps speaks for itself.

It is correct that the purpose of this Exhibit 29-B is to support my theory that the rates shown in the exhibits offered by claimants and noted in items 2, 3, 4 and 5 of my Exhibit 27-B were extraordinary, caused by unusual circumstances and that the standard rates at that time in effect over Florida East Coast Railroad were those shown in my Exhibit 29-B.

Now, the next item that I will mention is No. 7, which is a tariff of the South Georgia Railroad, carrying transit rates for 100 pounds on a mileage basis, issued August 18, 1929. I think it is perhaps not necessary to go again in great detail with respect to the rates of the South Georgia Railroad, as Mr. Myers at this hearing has indicated that the South Georgia Railroad has practically rented its railroad to the Lumber Companies on its line. However, I would like to file an exhibit showing the transit rate of the South Georgia Railroad for whatever it may be worth, so far as actual application is concerned, as compared with the rates prescribed by the Georgia Commission for the Class-A Trunk Lines in the State of Georgia.

[fol. 2304] Court: Are these exhibits sufficiently explanatory to just let them go in without comment?

A. Some of them would be, and some of them would not.

Mr. Alston: I would like to put them all in that way, but I am afraid I cannot.

A. Now the South Georgia Railway has adopted as transit rates, rates which are not very greatly different from what the Georgia Commission has prescribed for the Class A Trunk Lines in Georgia, and I have also shown on this exhibit what the Georgia Commission prescribed for application on the South-Georgia Railway. As a matter of fact, in one or two instances the net transit rates of the South Georgia Railway slightly exceed the rates prescribed for them as local rates, or manufacturing rates, prescribed by the Georgia Commission, but it appears clearly that what

the South Georgia Railway was trying to do was to put itself on substantially the same basis as transit rates as the Trunk Lines in that territory were operating.

It is right that the last column of this Exhibit 30-B shows rates prescribed by the Georgia Commission for application on the South Georgia Railway and those rates are somewhat higher than the rates prescribed by the Georgia Commission for application on Class A Trunk lines. It might be well to call attention to the fact, that the scale to which I have just referred extended only up to forty miles. The South Georgia Railway is an interstate road, running from Florida into Georgia and the rates applied by the Georgia Commission do not apply for the whole distance. Their interstate scale is very greatly in excess of their intrastate scale.

[fol. 2305] I offer this statement, which is headed "An analysis of claimants' Exhibit No. 3-A," as defendants' Exhibit 30-B. (P. 995-B of Tes.) This left hand column showing the South Georgia Railway transit rate is published in cents per one hundred pounds. There is no translation of feet to pounds on any of these rates shown on Exhibit 30-B.

Same objection by Mr. Adair as was made to previous exhibits.

The next two items I will mention are items 8 and 9 of my Exhibit 27-B. These are rates on logs furnished by the Seaboard Air Line to Boykins, Virginia, and from Fitz Siding to Norfolk, Portsmouth, and Suffolk, Virginia. I have made no analysis of them, except to call attention to the fact that the tariffs have expiration dates, and both specify that they were issued to meet truck competition.

Now item 10, in my Exhibit 27-B, is a tariff of transit rates from Sardis, East Warrenton and Newington, Georgia, on the Savannah & Atlanta Railroad, and will not go into that further than to call attention to the testimony given during this hearing by Mr. Sheppard, the Traffic Manager of the Savannah & Atlanta Railroad, stating the reasons why he made rates less than what he considered reasonable rates merely because of the fact, or for the purpose of preventing the logs being carried to Macon, and some other destination off of his line.

Items 11 and 12 of my Exhibit 27-B, are the rates furnished by the Georgia & Florida Railway for that line and

[fol. 2306] for the Statesboro Northern Railroad. I want to offer an exhibit to make a certain comparison with those rates, which will be defendants' Exhibit 31-B. The tariffs of the Georgia & Florida Railway here referred to, contain net transit rates per one hundred pounds on logs between stations on that line, and also a provision for a net transit rate of five cents per hundred pounds on the Statesboro & Northern Railroad. I have shown in Exhibit 31-B comparison of the rates so issued, as transit rates, with those prescribed by the Georgia Commission, for application on the Georgia & Florida Railway, and on the Statesboro & Northern Railway. I have done this merely to indicate to what extent the Georgia & Florida Railway has gone far below the level of the rates charged by any other Railroads in the State of Georgia and also to call attention to the fact that while the tariff provides for a transit rate of five cents per hundred pounds on the Statesboro & Northern Railway, that the rates prescribed by the Georgia Commission on that line for logs to manufacturers are all less than five cents.

I offer this statement, headed Analysis of Claimants' Exhibit No. 8-A, as defendants Exhibit 31-B. The rates prescribed by the Georgia Commission are the maximum rates. The railroads are permitted to charge less than the maximum rates if they choose but very few railroads would make rates such as the Georgia & Florida. They had some of the rates lower than the Cummer scale. Some were pretty bad. Some were four and a half cents per one hundred pounds for 200 miles which is not much credit to any railroad management.

[fol. 2307] I know that they are not hauling any logs. The Georgia & Florida runs from Augusta down to Madison, Florida, and it is in the hands of the Receiver. It always has been and probably always will be. The Central of Georgia Railway furnishes the same transit rates within the short distances into Augusta and Waynesboro, to meet the same rates as established by the Georgia and Florida Railroad. In other words, when issued they were in competition with the Georgia & Florida Railway for the logs that were competitive between the two railroads.

Same objection by Mr. Adair to defendants' Exhibit 31-B as was made to the previous exhibits.

Now I come to Item 14 of my Exhibit 27-B, which is the Georgia Commission's certificate as filed in this case by claimants showing mileage rates on logs forty thousand pounds applicable between points in Georgia.

The situation was this: About 1925 the Georgia Commission, after a hearing, granted authority to apply the same scale as between stations in Georgia as the Alabama scale, which in turn is the same as the I. C. C. scale. Those rates were issued to become effective, on a date in 1925, as I recall, but before the date effective complaints on the part of log interests in Georgia against the level of the Cummer scale in Florida, alleged a discrimination as against the then existing and lower rates in Georgia, causing the Georgia Commission to handle the matter with the Atlantic Coast Line, in order to dispose of their complaint against the Cummer scale. Our reply was that that scale would have to continue in effect in Florida because of the provisions of the contract. Thereupon, the Georgia Commission extended its previous authority to apply to the I. C. C. scale in Georgia, and allowed the previously existing rates [fol. 2308] to continue in effect, and those are the rates that are now still in effect in Georgia. The Georgia Commission then having failed to secure the removal of the Cummer scale in Florida, filed this complaint to the Interstate Commerce Commission, which finally brought the matter here.

The Georgia Commission did not increase its rates when the Interstate Commerce Commission passed the unlawful order increasing the intrastate rates in Florida, which the Supreme Court of the United States afterwards set aside. We have never asked them to do it. We never asked them to adopt the I. C. C. scale as long as it was in litigation. That I. C. C. scale was in effect in Alabama. That has not been superseded by these new rates to a great many manufacturing points on the Atlantic Coast Line and not to a great many manufacturing points on other railroads but I suppose to half a dozen points in Alabama. I knew that includes all the Louisville & Nashville Railroad in Alabama but omitting the mileage scale it is applicable specifically to half a dozen points.

Now the next items in my Exhibit 27-B are 15 and 16 and 17. These items refer to rates in North Carolina applicable to a car of 40,000 pounds, excess in proportion, and certain specific rates of Atlantic Coast Line between

points in North Carolina, applicable per thousand feet. It is also in the record of this case, in previous hearings as to what was the status of the log rates in North Carolina. The Interstate Commerce Commission, in prescribing what we now call the I. C. C. scale, made it practically the same scale from South Carolina stations to North Carolina stations, and from North Carolina stations to Virginia. In the latter case they didn't prescribe rates, but approved a scale that had been issued from North Carolina to South Carolina, or between North Carolina and South Carolina, and there was then under consideration the rates from [fol. 2309] North Carolina to Virginia, which they approved. Now we proceeded to procure uniformity. We had and still have a lack of uniformity of rates in North Carolina. There was a time 20 or 25 years ago when the Atlantic Coast Line Railroad handled logs in North Carolina on a basis of rates per thousand feet. Some of these are still in the tariffs, and as a part of this move that we made to secure authority from the North Carolina Commission to apply the I. C. C. scale in North Carolina, so as to secure uniformity throughout the whole system, we included the cancellation of all rates per thousand feet, or any other basis not in conformity with the I. C. C. scale. It so happened at the time of the hearing some of these manufacturers in North Carolina were moving to South Carolina, because of timber supplies, particularly for gum timber used by veneer manufacturers along the Santee, the Wateree and Peedee Rivers. There were tremendous volumes of it there, and they were moving their plants to be near their timber supply, and that caused the North Carolina Commission to withhold its decision, and the case is still before the North Carolina Commission. It was now sufficient to say that at that time the South Carolina rates were on the I. C. C. basis, and the mere fact that they were moving from North Carolina to South Carolina caused the North Carolina Commission to withhold action pending further developments. So applying the rates in North Carolina as they now exist, even though the Commissions' prescribed basis are somewhat lower than the I. C. C. but are not permanent, not by action of any of the railroads themselves.

[fol. 2310] That condition existed during the restitution period and still exists.

Now I want to file Exhibit No. 32-B, in connection with item 17 of my Exhibit 27-B. In claimants' Exhibit 19-A, there was presented Atlantic Coast Line Railroad, I. C. C. No. B-2512, containing several rates between the specific points in North Carolina and Virginia on logs and particular reference was made to rates between Farmville, N. C., and Wilson, N. C., between Laurinburg, N. C., and Wilmington, N. C., and Lumberton, N. C., and Wilmington, N. C., on the one hand, and between Farmville, N. C., and Greenville, N. C. The rate was said to apply over distances by the Atlantic Coast Line Railroad that by no means represented the true situation as to the making of the rate. Now in this Exhibit No. 32-B I have illustrated that by showing the distances by the route of the Atlantic Coast Line, as compared with the route of competing lines. Manifestly, a rate made by the Norfolk Southern Railroad for 23½ miles between Farmville and Wilson, N. C., does not represent the basis of rates on railroads in North Carolina, and the ability of the lines constituting the routes via the Atlantic Coast to meet the competition of the direct route from the Norfolk Southern depends entirely upon its meeting the rate of the Norfolk Southern. Now the intimation was that the rate was prohibitive and was beyond the measure of reason. It will be proved, however, that these rates applied in connection with short lines for the At-
[fol. 2311] lantic Coast Line does not run all the way between Farmville and Wilson, or between Laurinburg and Wilmington, or between Farmville and Greenville, N. C. It is in connection with short lines who keep their car hire in one block, and revenue receipts in another block. And then with any revenue they get, where there is any profit in it at all, it goes to pay payroll, and they don't cover the expense, and consequently we were parties to those joint rates without any degree of profit, merely in the interest of the short line. Now the North Carolina Commission, of course, requires the road that meets the rate of the short road, I mean that meets the competition of the short road, to adopt the short road rate, and if they are going to compete at all they will have to do that. It has been said that the Railroad is nowhere compelled to do that, but that is not entirely true. In South Carolina if my road is 300 miles, and the competitive road is 50 miles, the Railroad Commission in South Carolina requires me to meet with my 300 miles the rate made by the 50-mile line.

That is not true anywhere else on our line. I don't think that is true in Florida and North Carolina. They don't force you to do it.

Same objection by Mr. Adair to defendants' Exhibit 32-B as was made to previous exhibits.

Item No. 18 to my Exhibit 27-B refers to the rate of the Seaboard Air Line Railroad to Cheraw, South Carolina, expressed per car of 4,500 feet if in lots of 5 cars or more, and $13.00 per car of 4,500 feet if in lots of less than five cars. These are old rates, and have long since been cancelled, but I point out the inconsistency of any rate that would result in a charge of $37.80 for a total of six cars, and $52.00 for a total of four cars, which would be the fact under this tariff. In other words, they carry six cars for [fol. 2312] nearly $15.00 less than is carried four cars. That first five cars is the measure. How any one ever got a rate like that I cannot imagine.

An item of my Exhibit 27-B includes certain rates per thousand feet, formerly applicable on the Atlantic Coast Line in Florida, as shown in claimants' Exhibit 27-A, and the tariff reference is I. C. C. No. B-2183. These rates were established more than 20 years ago, at a time when they were handling all logs on a basis of measurement, and they were first gathered together in our tariff in 1912, Atlantic Coast Line Freight tariff No. 2451, and the rates were all finally cancelled in 1926.

Those rates were rates per thousand feet. They have had no real application since 1914, because when the Cummer scale became effective they naturally displaced these rates per thousand feet. However, these rates continued to be published but they were cancelled in 1926. I wouldn't be able to say whether or not they were cancelled within about a month of the time that this proceeding was instituted before the Interstate Commerce Commission.

Mr. Adair: You say that it has no real application. Now if any rate published in that particular scale was lower from any point of origin therein mentioned to any point of destination therein mentioned, this scale would apply instead of the Cummer scale?

A. It would be claimable by the shipper but I think you will find that that didn't occur and if it had occurred our accounting department would have checked it up. (P.

1005-B of Tes.) That was a point-to-point scale of rates applicable to particular destinations and in many instances from particular points of origin.

[fol. 2313] Now the advantage in that system of rates was that we were operating in the time, or rather they were operative in the time when we had less opportunity to weigh log cars, and that was the real reason for rates per one thousand feet, which was that the logs could be measured as they were measured, and the charges assessed according to measurement rather than weight, otherwise logs would have to be hauled long distances to get the track scales to weigh them, or otherwise use estimated weight, so for years we operated under rates per thousand feet. Whatever the rates may have been, they applied per thousand feet, but not within the last 18 or 20 years.

(Direct continued:)

Q. Mr. Perrin, please state whether or not the cancellation of the tariff Atlantic Coast Line, I. C. C. No. B-2183, referred to in claimants' Exhibit 27-A, and to which you have just referred, had any relation to the bringing of the suit by the Georgia Public Service Commission against the Atlantic Coast Line before the Interstate Commerce Commission in its Docket No. 18364?

A. I will answer that this way, that there has not been a step in connection with the handling of the complaint of the Georgia Commission that I have not had personal contact with it. I have never heard a suspicion of that kind before, and as a matter of fact the cancellation of the tariff was merely the routine work of the tariff compiling desk in the office. It has long since been obsolete. Yes, we continued to furnish that tariff until 1926.

[fol. 2314] The next item is item 20. Item 20 is for these rates of the Central of Georgia Railway from Dawson to Union Springs, Sandersville to Macon, and Gardner, Wrightsville & Tennille Stations to Gardner, Springvallo, Morris to Eufaula, Slocumb, Sellorsville to Macon, Montgomery Branch to Union Springs. In Exhibit No. 48-A, I think it is, the witness Green represented these rates as being still in effect. The fact is, however, that the rate from Dawson to Union Springs from Springvallo, Morris to Aufaula, and Slocumb and Sellorsville to Macon,

and from Montgomery Branch to Union Springs, and from Sandersville to Macon, were cancelled by Supplement 86 to the tariff I. C. C. 2772. That cancellation left the rates as those of the Georgia Commission on intrastate traffic, and of the interstate scale for the Central of Georgia, on interstate traffic.

They were cancelled June 3, 1932. That left in effect a rate from Sandersville to Macon and Gardner, and rates from Wrightsville & Tennille Stations to Gardner: The rates from Sandersville to Macon, when made in 1909, was the scale of the Central of Georgia Railway from Tennille to Macon, Sandersville being three miles from Tennille and the traffic being competitive between Sandersville and Tennille. The rates for the Wrightsville & Tennille Stations, issued also in 1909, were at that time the full combination of the rate to and beyond Tennille. That is, the rate of the W. & T. to Tennille, and the Central of Georgia Railway beyond, both subject to the 10% reduction prescribed by the Georgia Commission. Now that rate, as a [fol. 2315] joint through rate, continues in effect, of course, as amended by the subsequent horizontal percentage increases, two of them, and that general percentage reduction. But ordinarily the rate was prescribed by the Georgia Commission.

Now in item 21, as a part of claimants' Exhibit 31-A, there is shown a rate of 4½ cent per hundred pounds on logs over the Gulf, Mobile & Northern Railroad from Pascagoula, Mississippi, to Mobile, Alabama. Now the Witness Green gave that 4½-cent rate as the rate of the Gulf, Mobile & Northern Railroad for 80 miles, but he did not state that the distance from Pascagoula to Mobile over the Louisville & Nashville Railroad is 40 miles.

Q. Is that in competition?

A. Both lines operate through Pascagoula to Mobile. The short line makes the rate, and the 4½-cent rate for the L. & N. distance of forty miles is identically the same as the I. C. C. scale for forty miles.

Item 22 shows a similar situation. It is the Illinois Central Railroad rate from Greenville, Mississippi. That was shown by the Witness Green as 4½ cents per one hundred miles for the distance of 133 miles. He didn't state, however, that the distance from Greenwood and Greenville by the Columbus & Greenwood Railroad is 55 miles and the

rate of the Columbus & Greenwood Railroad for this distance is 4½ cents for one hundred pounds, which is the same as the I. C. C. scale for the same distance. Those two scales are competitive and the long line meets the short line rate.

[fol. 2318] Now this tariff, Illinois Central, I. C. C. 2473, filed by the Witness Green to cover this Greenfield situation, also contains rates per one hundred pounds on logs to Greenfield, Winifield, Jasper and Meridian, which I want to compare with the I. C. C. scale in defendants' Exhibit 33 R. That Illinois Central rate between Greenwood and Greenfield is still in force. That is merely a situation where the Illinois Central for a longer distance meets the rate of the short road of the Columbus & Greenwood Railroad and the rate is the same as the I. C. C. scale for the distance of the rate making road.

Mr. Adair: Has that not been superseded by the Illinois Central by lower freight rates, that is to say, if they be the lower?

A. I couldn't answer that.

Court: I thought you said 4½ cents.

A. It is. It may be that this new low per car rate that has been put in temporarily in that vicinity has superseded the Illinois Central rate, although I don't state that to be a fact but I do call your attention to this: That this Item 22, Illinois Central tariff I. C. C. 7423, was filed for the specific purpose of showing that such a rate was in effect in 1929. My evidence is for the purpose of showing that this tariff which is shown in claimants' Exhibit 31-A was not made under normal circumstances but was controlled by short line competition, and independent of the fact that it may have been superseded in 1932 by these per car rates, and even if that be true the purpose of this exhibit was to show [fol. 2317] that this 4½ cent rate was in effect in 1929, and it was.

Now, Item 23 refers to a rate from Miloago on the Laurinburg & Southern Railroad. That is a little thirty mile railroad running from Johns, North Carolina, to Raford, North Carolina, meeting the Atlantic Coast Line Railroad at Johns, and crossing the Seaboard Air Line at Laurinburg. I think that this is a tribute to Mr. Green's industry, if not his success, because when you examine the tariffs of

the Laurinburg & Southern and the Kentucky & Tennessee Railroads, to get comparative rates, you are pretty well sweeping the territory, but anyhow this was selected from the description in the tariff. That is, the description of the commodity and the application, and the description of the application of rates. The rate for the shortest distance was said to be $7.20 per car, regardless of weight, because of the fact that in the description of the commodity and the application of the tariff, it was provided as follows: Logs, rough, carload, minimum 40,000 pounds. Mr. Green concluded from that that the $7.20 rate was not restricted to the application of the minimum of 40,000 pounds and, therefore, applied, regardless of weight. As a matter of fact, the way the tariff was issued it really reads 720 cents per one hundred pounds. For five miles and under it reads 720 cents per one hundred pounds. Now the effort was to establish the rate as prescribed by the North Carolina Commission, which is a rate for 40,000 pounds, excess in proportion, and the fact that the tariff did not prescribe a rate [fol. 2318] per 40,000 pounds, excess in proportion, was due to the unfortunate expression in the way the tariff provision was put in. But as a matter of fact the tariff, if viewed from its technical view point, has no application at all except upon a basis of dollars and cents per one hundred pounds. Now I will explain that further by saying the following: That in the description of the commodity on which the tariff applies, and it applies on a good many commodities under the head of logs, it has this description, "Logs rough, carload, minimum 40,000 pounds," and then under the heading of the application of the rates, it has a provision that unless otherwise provided to the contrary the rates below will apply per one hundred pounds, and there is no provision to the contrary that would make the 720 cents apply to 40,000 pounds, or anything else except per one hundred pounds.

Mr. Adair: What is the rate after all that?

A. You are looking at it technically.

Q. I am asking you what the rate is. I cannot tell what you mean by your explanation, and what I would like to know is if you would be good enough to explain and say what the rate is?

A. I will say what the rate is; it is prescribed by the North Carolina Commission, because the Laurinburg & Southern Railroad would not have authority to charge anything more than the North Carolina Commission prescribes, and they prescribe $7.20 a car of 40,000 pounds, excess in proportion. Now that was the intent of the Laurinburg & Southern Railroad when it compiled that tariff, but it made [fol. 2319] a blunder of it and it has no meaning at all from a technical standpoint, except as expressed, it means 720 cents per one hundred pounds.

This tariff, Illinois Central Railroad tariff, I. C. C. 7423, filed by claimants as Exhibit No. 31-A shows rates issued effective March 12, 1929, in cents per hundred pounds, and Exhibit 33-B takes the rates published in that tariff to Greenville, Mississippi, Meridian and West Point, Mississippi, and Windfield, and Jasper, Alabama, and shows a comparison between the rates for the distances to those points under the tariff I. C. C. 7423, and under the I. C. C. scale. Now here is the situation where the rates per car, regardless of weight, had no application, because the tariff was the 1929 tariff, and the rates of the Illinois Central Railroad applicable per car, regardless of weight, were issued in 1932. It is perhaps not necessary to detail the comparison, for the exhibit shows the rate under both scales, for each and every distance involved in that tariff.

I offer in evidence the exhibit previously identified which is headed "Analysis of Claimants' Exhibit No. 31-A" as defendants' Exhibit No. 33-B. This exhibit proposes to show the Illinois Central rate. Whether or not they were subsequently affected by the rates they issued for per car, regardless of weight, these were the rates in 1929. In a good many instances they are lower than the I. C. C. scale but in just as many or more they are higher than the I. C. C. scale. This purports to include what is in the tariff. Of [fol. 2320] course, the Claimants put the tariff in there to show that rate of four and a half cents from Greenwood to Greenville, Mississippi, and I have merely added the other rates that are shown. I don't know whether this exhibit includes all of that tariff or only some of that tariff, but I will subsequently show in a more comprehensive way what were the rates of the Illinois Central Railway as a whole.

Same objection by Mr. Adair as to the previous exhibits.

Item 24, of my Exhibit 27-B, covers the Louisville & Nashville Railroad tariff, I. C. C. No. A-15700, issued to become effective March 21, 1926, and showing a rate of six cents per one hundred pounds from Alabama City, Attella and Gadsden, Alabama, to Chattanooga, Tennessee, for distances which the witness Green had stated to be 190 miles, 215 and 185 miles respectively. He did not state, however, that the rate is made by the Alabama, Great Southern Railroad, whose distances are 90, 87 and 92½ miles respectively, and that the rate of six cents for these Alabama Great Southern Railroad distances is the same as the I. C. C. rate for said distances.

This is just another case where the short line competitive railroad makes the long line competitive railroad meet the rate. They evidently wanted the lumber. They wanted to haul logs in order to get the lumber. It is the question of the long line meeting the short haul rate.

Now, items 25 and 26 are these rates of the Norfolk Southern Railroad and the transit rates of the Norfolk Southern Railroad to Hertford, N. C., and the rates to Norfolk and Suffolk, Virginia, which I will not dwell upon, as it was covered in the testimony of Mr. Ware, who told you of the competitive conditions under which this rate [fol. 2321] was made or these rates were made, both water competition and truck competition.

Now, Item 28 is a rate of $2.20 per car on logs from Sanford, between Sanford and Monroe Park, N. C. This rate was admitted by the witness Green to be unusual. Monroe Park is a part of the town of Sanford, and the rate was made to meet competition if Monroe Park should be treated as a part of Sanford. In other words, if there was a long movement that was to be delivered at Monroe Park, for there are industries at Monroe Park, which is a part of the town of Sanford, but the Atlantic & Western Railroad moves there and makes it non-competitive by making Monroe Park as a separate station. If they left Monroe Park as a part of the station Sanford, which is a competitive point there under switching regulations, they would have to perform switching service to and from Monroe Park. Now, they fixed a rate which represents substanfially the switching charge in order to observe the identity of Monroe Park as a local station on the A. & W. Railroad, and thereby remove the competition to the traffic to and from Monroe Park.

Now, Item 27, is the rate on logs from four stations on the A. B. & C. Railroad to Albany, Georgia, about which Mr. Pope testified, and he explained the competitive location of the timber competition, being between the Central of Georgia and the A. B. & C. Railroad. The distance from the nearby stations on the Central of Georgia Railroad being lower than the distances for the competitive stations on the A. B. & C. Railroad.

Item 30 contains Mississippi Central Railway I. C. C. 555, which is included in claimants' Exhibit 33-A, and Exhibit 34-B merely takes the rates out of the tariff referred [fol. 2322] to and compares them with the I. C. C. scale. You have a very low rate on pine logs up to 70 miles; they are all the way up to 70 miles.

They more nearly conform to the I. C. C. scale than to other scales. The Mississippi Central belongs to the United States Lumber Company, and the railroad bonds are guaranteed by the Lumber Company.

The last described exhibit, headed "Analysis of Claimants' Exhibit No. 33-A," was offered in evidence as defendants' Exhibit 34-B.

Same objection by Mr. Adair as was made to the previous exhibits.

The Mississippi Central Railroad runs from Natchez to Hattiesville.

Item 31 of my Exhibit 27-B is a tariff of the Bennettsville & Cheraw Railroad filed by claimants as Exhibit No. 37-A. In comparing that tariff reference is made to the fact that the rate for 45 miles was four cents per one hundred pounds. I have prepared Exhibit No. 35-B to show the comparison between I. C. C. scale and the rates for all distances on the Bennettsville & Cheraw Railroad. In other words, it is not sufficient to show the Bennettsville & Cheraw Railroad tariff by merely saying that the rate for 45 miles is lower than the I. C. C. scale when all other rates on that railroad are higher. That rate is in South Carolina. It is a 45 mile railroad.

By Mr. Adair:

That tariff shows on page 5 that the railroad will pay to the Tillman Lumber Company five dollars for logs hauled [fol. 2323] by that Lumber Company between Brownville,

South Carolina and Sellars, South Carolina, a distance of 10.44 miles. The rate comparison does not require you to show that in the analysis of the rate but here is the situation, that has nothing to do with the rates of the Bennettsville & Cheraw Railroad on logs. The Eastern end of the railroad from Brownville to Sellars where it connects with the Atlantic Coast Line is operated under contract between the Bennettsville & Cheraw Railroad and the Tillman Lumber Company. The Bennettsville & Cheraw Railroad pays this allowance per car on all traffic whether logs, lumber or other classes of traffic, for the Tillman Lumber Company only performs the service on that Eastern end of the Bennettsville & Cheraw Railroad and incidentally, the Tillman Lumber Company uses that Eastern end of the Bennettsville and Cheraw Railroad as a part of their plant facilities, and transports on this Eastern end the logs to the mill at Sellars. That arrangement was made with the approval of the Interstate Commerce Commission.

By Mr. Adair:

Q. You imply that the tariff and the memorandum on it filed by the claimants, did not disclose the fact that the scale was four cents for all distances up to 44 miles. Are you not in error about that?

A. The tariff discloses that, but, as I understand it, the rate wasn't there.

Q. Please examine that and see if that isn't so.

A. That is correct, but the exhibit is nevertheless true in its comparison.

[fol. 2324] (Direct continued:)

This rate structure shown on my Exhibit 35-B is absolutely correct. In connection with claimants' Exhibit 38-A, I tried to explain that the Tillman Lumber Company merely gets ten dollars per car to and from Sellars, South Carolina, which is the eastern terminus of the railroad and the most important part of that part of the Bennettsville & Cheraw Railroad. That division of the revenue to and from Sellars was approved by the Interstate Commerce Commission and that applies on lumber from Sellars, merchandise and traffic of all description, including logs as well. This condition is due to the fact that the Tillman

Lumber Company operates that part of the line in contract with the Bennettsville & Cheraw Railroad.

Statement headed "Analysis of Claimants' Exhibit 37-A" was offered in evidence as defendants' Exhibit No. 35-B.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

Item 33 is claimants' Exhibit 41-A, which is the tariff of the Tremont & Gulf Railroad, effective June 8, 1927, and contains rates for one hundred pounds and one thousand feet. In this exhibit which I offer as defendants' Exhibit 36-B, I analyze the tariff. I take the transit rates of the Tremont & Gulf Railroad applicable per thousand feet, also their local rates applicable for one hundred pounds and compare them with the I. C. C. scale.

[fol. 2325] The poundage used on yellow pine logs is 10,000 pounds per thousand feet, cottonwood and gum logs 7500 pounds per thousand feet and all other kinds of logs 10,000 pounds per thousand feet. Now, using both the rates described in the tariff for comparison in rates per thousand feet, I show in the second and third rate column the equivalent per one hundred pounds rates, which are transit rates and they are shown in comparison with the I. C. C. scale. The significant part of the tariff is Item B, reading as follows: "Rates named in Item 40, the rates per thousand feet, will apply on logs for manufacture and re-shipment of finished product via Tremont-Gulf Railway. These rates are to be used as reshipping rates only, and are not considered in themselves remunerative and are conditioned upon the manufactured product being reshipped via the Tremont & Gulf Railway." Now that railroad considers them unremunerative, and yet they make them.

The exhibit which was just identified and which is headed "Analysis of Claimants' Exhibit No. 41-A," was offered in evidence as defendants' Exhibit 36-B.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

I have finished with what I had to say about the tariffs in my Exhibit 27-B and I will now proceed with another exhibit in which I compiled the list of the tariffs filed by the claimants as containing rates on miscellaneous commodities, such

as waste wood, lumber, mine timber, cord wood, and poles and piling.

This paper which I offer as defendants' Exhibit 37-B consists in the first column of the consecutive item numbers that [fol. 2326] I have there, and in the next column reference is made to the carriers and the claimants exhibit numbers, the tariff reference, date effective, commodity, application and notes. There are in this exhibit 20 tariffs or supplemnts, and a certificate by the Florida Commission. Fourteen of these tariffs or supplements there were issued, subsequent to the two year period in which the Florida logs moved during the restitution period. Now, I will take these up in somewhat the same manner except that there are groups of commodities which I will treat simultaneously. The rates on waste goods, such as stumps, roots, limbs, etc., are covered by items 2, 3 and 16 of my Exhibit No. 37-B. Now, perhaps I should say that these items cover a commodity which I describe as waste wood, and which is a term usually used to designate that particular article of traffic. It is stumps dug up from the ground, the remains of trees that have fallen in the woods, the limbs of trees, and all used for the purpose of extracting some form of Naval stores by distillation processes. This is a class of traffic of low grade, and the Railroad Company in the interest of development can well afford to handle this at low rates because of the benefits to be derived from the development of agricultural interest. In other words to the extent that it clears land for agricultural purposes and deals in a product that would otherwise go to waste, and some of the Railroads have made some very low rates on them. Now these items 2, 3 and 16 are the rates respectively for the Apalachicola Northern, Atlanta & St. Andrews Bay, and Atlantic Coast Line Railroads. The rates for the Atlantic Coast Line were issued to become effective on January 25, 1924, and for application in Florida, and were cancelled on December 20, 1927.

[fol. 2327] Now, if the claimants had desired to show what is a reasonable scale on waste wood, they wouldn't have found it necessary to get the Interstate Commerce Commission to certify a copy of the Atlantic Coast Line Railroad, I. C. C. B-2255, because the Florida Commission itself has dealt with the matter of rates on Waste wood and has provided for rates, reasonable rates on all lines in the State, and I want to show what those rates are.

In 1930 the Florida Commission entered into an investigation with a view of establishing rates for all railroads in the State, to apply on this waste wood. Then subsequently and after the hearings they issued order No. 1027 effective November 24, 1930, describing as reasonable rates on Atlantic Coast Line the rates shown in the last column of this exhibit. They also prescribed the rates shown in the first column to be applied on the Apalachicola Northern Railroad and the Atlanta & St. Andrews Bay Railroad, published a rate of 3½ cents for all distances up to 60 miles. The last column shows the conclusion of the Florida Commission as to what they considered reasonable rates on the Atlantic Coast Line on traffic of that nature.

That order 1027 was for general application in Florida. Of course, these short lines are authorized to charge a higher rate than the trunk lines and that accounts for the fact that the Apalachicola Northern Railroad rate are one cent higher than the rates of the Atlantic Coast Line. Waste wood is generally described as an item of Classification in railroad freight tariffs and the articles included are enumerated such as roots, stumps and limbs.

[fol. 2328] That classification does not fix rates at all. I mean by that that there is no standard basis of rates on waste wood. It varies in different sections of the South wherever these plants are located. In the case of the Atlanta & St. Andrews Bay Railroad, they had a special interest in gathering as much of this material at the plant on their line as they could, as they were interested in the success of the plant. The Florida Commission, however, fixed the rates, both with regard to the low character of the traffic and also with regard to the revenue of the carriers, taking into consideration the low type of traffic that was involved. I don't know whether there are any point to point rates in Florida below the level of that.

The exhibits thus identified by the witness were offered in evidence as defendants' Exhibits 37-B and 38-B.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

Now, from my Exhibit 37-B items 4, 6, 7, 8, 9 and 10, cover certain rates on pulp wood for the Alabama & West Florida Railroad, the Norfolk Southern, the Louisville & Nashville Railroad, The Alabama Great Southern, The Mobile & Ohio and the Alabama, Tennessee Railroads. These

rates were filed by the Claimants as their Exhibits 3-A and 6-A. Now, I am treating all of these tariffs by showing in an exhibit a comparison between the I. C. C. scale on logs and the rates on pulp wood applicable on trunk lines in Florida as prescribed by the Florida Commission.

[fol. 2329] Now, I have shown in Exhibit No. 30 the general level of rates on pulp wood as prescribed by the Florida Commission, and also the rates on logs under the I. C. C. scale. We have tested some of the weights and used 3000 pounds per cord as a basis of comparing the rates per cord with rates per one hundred pounds. That is dry. Green will weigh more than that. I couldn't say how much more. I wouldn't be surprised if it should weigh 500 pounds more but the ordinary pulp wood being shipped is dry pine, split. If shipped green the comparison as far as per one hundred pounds is concerned would be effected similarly. In other words, weight should be part of the consideration in fixing the rate. What I am doing is translating a rate published in per cord terms to terms per pound. The rate is not published in pounds. It is published in cords.

Mr. Adair: And the amount the cord weighs would control the ratio of comparison you are making here. If you have the wrong weight of the wood, then your comparison is valueless.

A. In other words, if they are shipping something that we knew they are not shipping, then this comparison would not apply. The rates are not made on weights at all.

Exhibit headed "Analysis of Claimants' Exhibits No. 3-A and 6-A" was introduced as defendants' Exhibits No. 30-B.

Objection by Mr. Adair that there is nothing to show the circumstances there involved have any bearing on, relation to, or are similar to the circumstances here involved. That the matters sought to be proved are incompetent in this proceeding and immaterial and irrelevant to the issues here [fol. 2330] involved; that it has not been shown what proportion of cord wood moves green and what proportion moves dry, or what the weight of green wood is or what number of cords there are to a car.

(Witness continuing:)

Now, items 5, 11, 12 and 13 of my Exhibit 27-B show certain rates applicable for creosoting in transportation of

lumber, poles and cross ties on the Norfolk Southern, Atlantic Coast Line to Montgomery, Alabama, and Charleston, South Carolina, and the Southern Railway to Charleston, South Carolina. The Norfolk Southern is to Norfolk, Virginia. There is now absolutely no relation between these and log rates, but if the comparison is to be made to the rates shown in tariffs to which the claimants have called attention, there must be added an additional two and a half cents per hundred pounds, which is a provision of the transit tariff. In other words, if the rate is 3 cents per hundred pounds, as shown in the mileage scale of rates, in this tariff, there is an additional charge of 2½ cents per one hundred pounds that accrues in there by reason of transit feature.

Court: That rate, I understand, includes creosoting?

A. They do their own creosoting.

Court: The railroads don't do the creosoting?

A. No, sir; it is substantially the rates below the tariff rates, part of our charge on the lumber, cross ties or poles after being creosoted. In other words, the transit rates put the rate on the product from its origin point of shipment [fol. 2331] and carries it on to ultimate destination, at the through rate to ultimate destination, and this 2½ cents is added just for the privilege of the transit service, the privilege of giving it creosote. So that any rate that appears in that tariff is subject to the additional two and a half cent charge, and you will find that by adding 2½ cents to any of these rates it lifts them up above the level of the I. C. C. log rate. Some of the rates are back-haul charges. The back-haul charge, for instance, at Charleston, South Carolina. This tariff that has been filed applies only for stations north of Charleston, because for stations south of Charleston the ordinary transportation rules would apply whereby the uncreosoted material would be hauled in by local rates. And after being creosoted they would be rebilled generally to eastern and western destinations on the basis of through rates on the lumber products from points of origin to ultimate destination, plus the 2½ cents transit charge. The principle governing the rate from north of Charleston is that the transportation back to Charleston is back-haul. In other words, it goes over the same track twice. In effect and substantially it is the same thing, but it is a back-haul service for which this charge is made.

The back-haulage transportation movement in this particular cause would command a less rate than the original transportation, but not on account of that feature, but the fact is that from points South of Charleston the through rate covers from the point of origin to the ultimate destination, whereas, for back haulage you have to provide something because you are then operating from stations north of Charleston, from which the rates would be lower to ultimate destination than from Charleston, so these back-haul charges in that way are different from the rates applicable where it moves on direct route on the transit rate.

[fol. 2332] Item 17 of my Exhibit 37-B, is a tariff of the Interstate Railroad filed by the claimants to show rates of the interstate railroad on mill timbers to coal mines, and I want to offer an exhibit to show what rates the interstate railroad publishes on logs. The Interstate Railroad is a coal mine railroad of short distance located in the Southwest portion of Virginia in the coal fields.

A copy of the Interstate Railroad tariff I. C. C. No. A-192, effective September 6, 1929, certified by the Interstate Commerce Commission and containing a mileage rates on logs, was offered in evidence as defendants' Exhibit 40-B. (P. 1030-B of tes.)

Same objection by Mr. Adair as was made to defendants' Exhibit No. 39-B.

In my Exhibit 41-B I compare the log rates of the Interstate Railroad with the log rates under the I. C. C. schedules. The log rates of the Interstate Railroad as shown by my Exhibit 41-B are very much higher than the Interstate Scale.

Item 15 of my Exhibit 37-B refers to the question of short log rates on the Atlantic Coast Line Railroad in Florida as presented in claimants' Exhibit No. 14-A. That is, in effect, a duplication of Item 1 of my Exhibit No. 37-B, which is a certificate of the Florida Railroad Commission as to the same line of rates on short logs in Florida. In my examination of the record as to the short log rates I found that in September, 1932, at the hearing, I made a certain statement about the short length log rate that was confused in my mind with these waste wood rates. I was asked a question about short length logs and the tariff on waste wood rates and there is some confusion there because

I made certain statements which are not entirely correct. In other words, I was speaking of a situation with which [fol. 2333] I had no personal contact and so stated in my reply to the question. The confusion in my mind was that I was expected to speak with regard to waste wood, whereas, the subject under consideration was short logs. Here is the history about short log rates in Florida. The Florida Commission up to 1917 prescribed rates on both long logs and short logs, other than cedar, which were Class P rates, for a car of 24,000 pounds. In 1917 they prescribed Class P rates to 30,000 pounds covering short logs also, except in the meantime, they had prescribed certain other rates on short logs for the Seaboard Air Line Railroad and the Atlantic Coast Line Railroad, so when the Cummer Scale became effective in 1914, up to that time all rates on logs, both long and short, other than these rates per thousand feet, the rates prescribed by the Florida Commission in Florida were the Class P rates per car per 24,000 pounds. In 1914 the Cummer scale made its appearance and in 1915 the short length logs. Now, mind you, the Cummer scale applied only on the long logs and in 1915 it was found that the short logs remained on this high level of Class P rates for 24,000 pounds, and it made the rates on the short logs so much higher than on the long logs, that there was much complaint about it. There was complaint to the Florida Commission and complaint to both the Atlantic Coast Line and Seaboard Air Line. The Florida Commission first ruled that the Cummer scale on the Atlantic Coast Line would have to apply on short logs. However, the Atlantic [fol. 2334] Coast Line went into negotiations with the Florida Commission and they finally prescribed Class P rates on Short logs to 40,000 pounds. Now that means that having Class P rates to 24,000 pounds as the prescribed rates on long logs, that they prescribed rates on short logs that were lower because they were the Class P rates applying for 40,000 pounds. This short log rate was arrived at by negotiations between the Atlantic Coast Line, Seaboard Air Line and Florida Commission. It was not a rate prescribed upon an unwilling railroad. Here is what took place: We went to Tallahassee and the Florida Commission said you will have to apply this Cummer scale on short logs, so when we went to Tallahassee and told them that these increases of these short train load rates, as origi-

nally established under the Carpenter-O'Brien contract, which the Florida Commission would not allow to go into effect, that they were about to enforce upon us rates on short logs that were unduly lower. Then finally, in order to bring about a closer relationship between the Cummer scale rates on short logs and the Class I' rates for 24,000 pounds, or Cummer scale on long logs, they brought those nearer together by making the Class I' rates 40,000 pounds minimum, excess in proportion.

Q. But your road and the Seaboard Air Line agreed to it?

A. Yes, sir, we realized that with Class I' rates for 24,000 pounds, on the short logs, there was too wide a margin between rates on the long logs and the short logs. They [fol. 2335] had to do something with it. Now the Interstate Commerce Commission then came into the situation, and they ordered us to put in the I. C. C. scale on long logs, but they supplemented that original agreement and said that this has no application to short logs. Then they raised the long logs up to the I. C. C. scale and left the short logs lower than the long logs, wich was a very abnormal situation. Now, every scale of rates which the Interstate Commerce Commission had prescribed for the Atlantic Coast Line, say from North Carolina to South Carolina, and South Carolina to Savannah, had been made specifically to apply on short logs, this I. C. C. scale was originally established to apply on short logs, and in all other territories, on all other parts of our line, excepting Florida, and on all of these railroads in the South, and all of these tariffs filed by the claimants, and which will be filed by me, the same rates apply on any kind of log, whether long or short, and it is only this condition in Florida that has resulted in an abnormally lower rate on the short logs, as compared with the long logs. As a matter of fact the short logs are no more than long logs that are cut into convenient lengths for handling.

When this decision which was rendered by the Interstate Commerce Commission in this matter, dated August 2, 1928, was about to go into effect in February, 1929, the Atlantic Coast Line first proceeded on the basis of the Commission's original decision to treat the rates on the I. C. C. scale as applicable on any logs whether long or short, and we ac- [fol. 2336] tually did, and it still continues in effect, then

and for the future, so far as the movement out of Florida is concerned, or movement anywhere else, except interstate commerce. But the Interstate Commerce Commission amended their decision and said that order didn't have any reference to short log rates. Therefore, we had to continue this Class I rate of 40,000 pounds in effect on the short logs in Florida. We apply the same rates on the two kinds of logs, short and long logs, elsewhere. I doubt that the short log movement is heavy enough between any two stations in Florida to permit a trainload movement. The short log rate is in effect on the Seaboard Air Line also. We have not made any application to the Florida Commission to increase that rate. That does not mean that we would not have liked to have done it but we realized that under the conditions as they are now, it would be an idle gesture. I think it would have been an idle gesture even in 1926 as long as the Cummer scale was in effect for the reason that it was established in 1916 and was still continuing in 1926 when the Cummer scale was still in effect. I think that it would be idle to ask the Florida Commission, which is using the short length log rates as a standard of reasonableness in this litigation to increase the figures that they are trying to use. (P. 1035 R. of Tes.) I know that individual petitions were filed by Florida people asking a revision of the decision of the Interstate Commerce Commission so as to make it not applicable to short logs. My information and belief is that the Florida Commission did not file any petition with the Interstate Commerce Commission with respect to excluding these logs from that [fol. 2337] order. I don't think they made any motion before the Commission for the stopping of the order at all. They did in the Court down here in Duval County but not before the Interstate Commerce Commission. I don't think the Florida Commission ever asked the Interstate Commerce Commission to construe that order at all for they had taken the position that it acted beyond its authority and jurisdiction in making that order. None of the Claimants that I know of asked for a construction of that order. We did not make any such motion so far as I know.

Item 19, as shown on my Exhibit 37-B, is the tariff of the Tennessee, Alabama & Georgia Railroad, containing a rate on cord wood from Gadsen, Alabama, to Chattanooga, Tennessee, on wood of $1.34 per cord. I can only say about

that, that it is thoroughly inconsistent. First, the rates on wood have no relationship at all to rates on logs anywhere. Second, the Tennessee, Alabama & Georgia Railroad is a party to a protest against the action of the Alabama Commission in having established for the same distance within Alabama, a rate of $1.90 per cord, and the rates so protested are issued in the tariff containing the protest, so that the Tennessee, Alabama & Georgia Railroad has for some reason that I don't know about, made a rate of $1.34 for that distance from Gadsen to Chattanooga, whereas they protested, with all earnestness, the action of the Alabama Commission in making a rate of $1.90 for the same distance.

[fol. 2338] This dry split pine will weigh 3,000 pounds to a cord. There are 12 cords to a car.

Item 21 of my exhibit is a tariff of the Birmingham & Southeastern Railroad filed by claimants to show rates on hardwood billets from five stations on that line to Union Springs, Alabama. I want to present now an Exhibit No. 42-B, showing what the Birmingham & Southeastern Railroad charges on logs as compared with the rates in the I. C. C. scale. It will be noted that the Birmingham & Southeastern Railroad rates on logs are uniformly one-half cent higher than the rates in the I. C. C. scale. The Birmingham and Southeastern Railroad is between forty and fifty miles long.

Item 22 of my Exhibit No. 37-B is a tariff of the Seaboard Air Line Railway on poles and piling from Jamestown, South Carolina, to Charleston, South Carolina, filed by the claimants as their Exhibit 35-A, the tariff being I. C. C. No. A-7656. This tariff was cancelled and the original eliminated by I. C. C. 7665. The tariff shows specifically that the rate was issued to meet truck competition. It is probably between 30 and 50 miles from Jamestown, South Carolina, to Charleston, South Carolina.

I have comments to make on two other items of my Exhibit 37-B and those are Items 14 and 20, which contain the tariff of the Illinois Central Railroad covering lumber and staves to Memphis and of the A., T. & M. on lumber to Mobile, both being net transit rates. The rates are thoroughly inconsistent because they are made less than the log rates in effect at the same time, during the 1929-1931

[fol. 2339] period on these railroads. In other words, they made transit rates on lumber lower than rates on logs.

Exhibit headed "Analysis of Claimants' Exhibit 31-A" was offered in evidence as defendants' Exhibit 41-B. The exhibit just identified by the witness having a like heading was offered in evidence as defendants' Exhibit 42-B.

Same objection by Mr. Adair as was made to defendants' Exhibit 39-B.

Now up to this time, in discussing tariffs I have been analyzing the tariffs filed by claimants. I analyzed them in three sections, dividing them into three classes, those of the per car rates, those of the rates per one hundred pounds or per one thousand feet, and those applicable on miscellaneous commodities, and I have reached the point now where I am going to file some exhibits of my own, independent of what the claimants have filed. I want to state that after I have filed certain rates that have been prescribed in recent years by the Interstate Commerce Commission, I propose to introduce the tariffs of the railroads that were applicable in the restitution period, and cover very closely approximately the total log movement in the South, as I observe it. By that I mean I propose to file nothing but tariffs that were applicable during the restitution period; nothing but the rates that our lines and other lines applied during the restitution period, and to show that our line and the other lines using the rates that I thus submit, carried practically all the log traffic of the South. And in connection with these tariffs I will show how the rates compare with the I. C. C. scale. Now before proceed-[fol. 2340] ing with that, I offer as defendants' Exhibit 43-B, a statement of the rates, giving I. C. C. references that have been prescribed by the Interstate Commerce Commission for single line application in various situations in the South. These decisions all took place after 1922, when all rates were reduced ten per cent. I call attention to the fact that none of these rates are merely approved rates, but they are prescribed rates and took the place of rates that were in when these rates were prescribed and made effective.

The railroads are permitted to charge less than these rates if they elect to do so but they cannot be legally forced to make low rates. (P. 1040 B of Tes.) These rates show

the distances under the I. C. C. scale as applied in the restitution period between points in Florida. There are eight columns of rates with footnote references to the I. C. C. tariff in which these decisions and orders are compared. These references numbered one through eight, both inclusive, at the bottom of this exhibit, shows the authority for my exhibit and also shows the points of application for these rates. For instance, the rates in column 1, or Reference 1, were prescribed in 120 I. C. C. on logs to Savannah, Georgia on the Atlantic Coast Line Railroad stations in South Carolina, and was decided December 29th, 1926. Then in reference 2, those rates were 146 I. C. C. 317, on logs from points in Alabama, Florida and Mississippi to Mobile, Alabama, decided July 6, 1928. A substantial part of the Southeastern tariffs is shown in these respective [fol. 2341] exhibits which I am going to cover. They cover all the decisions of the Commission applicable within the South to single line application. I have not dealt with rates that they prescribe for joint hauls, because the Commission recognized the propriety of making higher rates for joint hauls between two or more railroads than for single line railroads, but this exhibit is restricted to those decisions of the Commission in which they prescribed rates for single line application. In those references where I used the word "decided" I simply mean by that the orders of the Commission prescribing those rates. It means this, that in all their decisions, in their reports, they show dates submitted and dates decided, sometimes within a few months and sometimes within a few years, but those are the dates they render the decisions on matters before them. All the rates referred to by me are equal to or greater than the rates charged in this case by the Atlantic Coast Line Railroad. I think the Commission has made no rate anywhere less than the I. C. C. scale in Florida, and in several instances has made slightly higher rates, as shown by this exhibit.

This statement showing a comparison between the I. C. C. scale of rates in cents per 100 pounds on logs applicable on the Atlantic Coast Line Railroad in Florida, and the rates on logs prescribed by the Interstate Commerce Commission for single line hauls between various southern points since 1922, was offered in evidence as defendants' Exhibit No. 43-B.

By Mr. Adair:

I can supply the names of the railroads affected and put them in my references if this is thought to be pertinent. [fol. 2342] This was a mileage scale for single line application on railroads to Mobile, on the railroads that reach Mobile. It was applicable on all the railroads operating in Florida and Mississippi to Mobile. After June 2, 1931, some of the railroads operating to Mobile put in a car rate regardless of weight into Mobile. I don't know that all of them did but it does not affect the fact however, that the Interstate Commerce Commission fixed this as a reasonable rate. It is true that around July 21, 1932, several of the railroads operating into Chattanooga put into effect these per car rates which the Interstate Commerce Commission said was substantially upon the level of the Chimney scale but these were not put in as a reasonable maximum rate. Yes, these rates were put in for the transportation of logs but that didn't represent reasonableness.

Same objection by Mr. Adair to defendants' Exhibit 43-B as was made to defendants' Exhibit 39-B, and the further objection that the railroads to which these references are applicable are not shown on the exhibit.

As I have previously stated, I have up to this time been dealing with tariffs filed by the plaintiffs, and I have just filed a statement of rates prescribed by the Interstate Commerce Commission for single line application during the period since 1922. Now I am proceeding to file the tariffs that were in effect during the restitution period for practically all of the lines in the South that carried a substantial volume of logs, and to show that those tariffs were in effect during the two-year period, and to show the respective volume of the movement in the two-year period, or the [fol. 2343] ratio volume. For the latter purpose I offer Exhibit No. 44-B. Exhibit 44-B contains a list of Class 1 lines in the Southern region, and by Class 1 line is meant the lines that earn a million dollars or more per annum; that earn in their gross earnings one million dollars or more per annum. Class 2 lines are those earning from one hundred thousand dollars per annum up to a million, and below that rests a third class line. This Exhibit No. 44-B shows for the two years, 1929 and 1930, which closely represents the restitution period, for each of the Class 1

lines in the Southern region, the number of tons of logs transported. The arrangement of the lines is in the order of their importance, as measured by the volume of their respective tonnage. I mean their respective log tonnage. The column headed "Cumulative Percentage" means this, that the Atlantic Coast Line Railroad handles 17.1% of the log tonnage of all the lines named in the exhibit, that is 17.1% of 9,484,059 tons. (P. 1045-B of Tes.) This last figure is the total of the 29 lines mentioned in the exhibit. The A. C. L. and the Yazoo & Mississippi Valley Railroad transported 34.1% of that total. The figures which appear on this proposed Exhibit 44-B were obtained from the annual reports of these railroads to the Interstate Commerce Commission. I do not have those reports here.

Objection by Mr. Adair to any testimony concerning what comes out of those records inasmuch as those reports or certified copies of those reports have not been produced.

Mr. Alston: Your Honor, we will get certified tariffs.

Mr. Adair: If you will send certified sheets to us before the close of the case we will be glad to check them and then we will be glad to waive the objection if we find them all right. I particularly want it to be shown by years, as distinguished from being lumped in two years.

[fol. 2344] A. All right. Now the 15 lines, from one to sixteen, transported 94% of this total tonnage of all of these Class 1 railroads, and I mentioned that because I expect to present the tariffs of these sixteen lines, under which this tonnage in the restitution period moved, contemporaneously with the movement of the logs in Florida during this restitution period. I furthermore expect to present certificate of the tonnage handled by the Class 2 Railroads, which are not here shown. It will be found, however, that the bulk of the logs that moved in the South during this two year period were moved by these lines named in this exhibit. Now having indicated the importance of the railroads themselves as transporting the bulk of the log traffic in the South, I propose to submit the tariff of the Line that performed that service, contemporaneously with the transportation of the logs involved in this case.

First I will offer as Exhibit No. 45-B certified extracts from the tariffs issued by or on account of Atlantic Coast Line Railroad showing that the I. C. C. scale has been and

was in effect during the whole two year period, and substantially throughout the length of Atlantic Coast Line in all interstate situations, except that for South Florida points the rates of Atlantic Coast Line for interstate application were slightly higher than the I. C. C. scale. We gave the I. C. C. scale universal interstate application. It did not apply intrastate in Georgia, North Carolina and South Carolina but it did apply in Alabama and all inter-[fol. 2345] state situations. The I. C. C. scale applied in all interstate commerce done by the Atlantic Coast Line Railroad, with the reservation that the rates from South Florida for interstate destination were made slightly higher than from North Florida to the same destination. In other words, this scale was not prescribed by the Interstate Commerce Commission for application from South Florida into Georgia. It was prescribed only for the Northern part of the State. For the Southern part of the State of Florida the rates were slightly higher.

By Mr. Adair:

This I. C. C. scale did apply in Interstate commerce from North Carolina into Virginia and from South Carolina into North Carolina and from South Carolina to Georgia. With the exception of South Florida it has universally been applied throughout the entire system of the Atlantic Coast Line for interstate transportation. These tariffs on the page which has Carolina Lumber Company Tariff, No. 4 I. C. C. No. A-361, or Agent J. H. Glenn's I. C. C. 361, they contain the rates applicable as to the Atlantic Coast Line stations in Georgia and Alabama on the one hand and in South Carolina and Virginia on the other. They contain the rates published from North Florida to stations in South Carolina, South of Charleston, which at that time were slightly higher than the I. C. C. scale but this difference, however, was removed by subsequent tariffs.

Same objection by Mr. Adair to defendants' Exhibit 45-B as was made to defendants' previous exhibits.

[fol. 2346] Now, I might interpret the tariffs in there just for the purpose of anyone who wants to examine them. I. C. C. No. N-2312 applies on interstate traffic between points on the Atlantic Coast Line in North Carolina, South Carolina, Virginia, and to and from Augusta, Georgia.

Agent J. H. Glenn, I. C. C. No. A-361, applies for account of the Atlantic Coast Line Railroad from stations in Alabama and Georgia, on the one hand, to stations in North Carolina, South Carolina and Virginia on the other hand, and also a slightly higher scale from stations in North Florida to stations in South Carolina south of Charleston.

Next, Agent Glenn's I. C. C. No. A-659, applying between points in Alabama, Georgia and Florida, except that a slightly higher scale applies to and from South Florida.

Agent Glenn's I. C. C. A-647 applies from points in Alabama, Florida, Louisiana, North Carolina and South Carolina to the South Atlantic ports, with a slightly higher scale applicable to South Florida.

Agent Glenn's I. C. C. A-531 and Supplement No. 43 thereto, the supplement containing the revised rates to the South Carolina stations, applicable from North Florida to points in South Carolina south of Charleston. So that the rates from North Florida to points in South Carolina south of Charleston were placed upon the basis of the I. C. C. scale. This latter tariff is not included in Exhibit 45-B, but is in Exhibit No. 46-B.

[fol. 2347] Now having filed as Exhibit 45-B and Exhibit 46-B the tariffs of the Atlantic Coast Line having interstate application, I will proceed to file another exhibit containing the rates of other Southern Lines embraced in this Class 1 classification.

The tariff thus identified by the witness was offered in evidence as defendants' Exhibit No. 46-B.

The tariff which became effective April 5, 1931, is Supplement 43 to Glenn's I. C. C. A-531, to which I have just referred as having made the interstate rates from North Florida to points South of Charleston, South Carolina the same as the I. C. C. scale.

Same objection by Mr. Adair to defendants' Exhibit 46-B as was made to defendants' previous exhibits.

I think that I am duplicating here the tariffs put in evidence by me at Wilmington and Atlanta to a very negligible extent. In fact, I don't recall having filed any of the tariffs I am filing. I have previously filed merely some comparative figures as far as the rates of other lines are concerned. I am now going to compare the rates in these tariffs with the I. C. C. scale. I did not do this to such an extent in

Wilmington and Atlanta in this proceeding as I am doing now. I am going to elaborate.

I offer certified tariffs of the 15 railroads, which together with the Atlantic Coast Line, handle 94% of the log traffic handled by the Class 1 railroads in Southern territory in 1929 and 1930, as defendants' Exhibit No. 47-B.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

[fol. 2348] Mr. Adair made the further objection that the tariffs constitute a duplication of tariffs already in the record, which were offered at Wilmington.

By Mr. Adair:

I don't recall whether the tariffs contained in this Exhibit No. 47-B represent any of the tariffs extracts that were offered in Wilmington, North Carolina. I don't recall filing any tariffs in Wilmington, N. C. Mr. Warren filed them. He is my junior officer. Those tariffs were certified by the Commission at my direction and were filed in Wilmington at my direction.

Court: If you are sure about that I won't let them in, but why not go on and let them in and when we go to make up the record we can eliminate them.

(Witness continuing:)

I think you will find that the duplication is limited; that this duplication is very much less than 80%. I have never had occasion to consider the tariffs of the Lines whose tariffs I am now filing. Now in this connection, as to Exhibit No. 47-B, I want to say with respect to that exhibit and some of the others that I will subsequently offer, that we went to the extent of getting tariffs that were in effect generally since or as late as February 8, 1929, and we furthermore got certificates to show that substantially the whole of these rates that I am filing, remained in effect during the two year period.

[fol. 2349] Now Exhibit No. 48-B is a comparison of the rates under the I. C. C. scale, with the rates of Southern Lines which do not publish rates per one hundred pounds, as transit rates. First is shown the I. C. C. scale, followed by thirteen different scales of rates, the application of

which is shown on the second sheet. For instance, the rates under column one are those of the Southern Railway in its I. C. C. No. A-10159, applicable on logs, on North Carolina and Virginia intrastate traffic, or between points on the Southern Railway. Columns 2, 3, 4 and 5 apply on designated points of Virginia on intrastate traffic on the Southern Railway, and so on. Now these comparative rates of the Southern Railway, the Seaboard Air Line, Central of Georgia, Norfolk Southern Railroad, Nashville, Chattanooga & St. Louis Railway and the Charleston & Western Carolina Railway, are stated, and the reason why it shows those particular Lines is that they, together with the Atlantic Coast Line, are the lines in the South who have not (P. 1055-B of Tes.) established normal rates on logs under the transit system.

The rate I have here under these columns is the rate for 100 pounds and these rates were in force during the years 1929 and 1930.

The exhibit just described by the witness was offered as defendants' Exhibit No. 48-B.

If there are point to point rates on logs on these roads whose rates I have dealt with in this Exhibit 48-B, I have no knowledge of them. I have no knowledge of any point to point rates that are not measured by the mileage scale. I know there are some point to point rates on the Norfolk Southern Railroad since then that are lower than this scale I have here. I don't know that our witness Mr. Ware talked of point to point rates in effect on the Norfolk Southern [fol. 2350] Railroad that had been in effect since 1925. I didn't hear him. I do say if the Norfolk Southern Railroad has any rates that do not conform to the scale of rates shown in Columns 10 and 11, they are made under competitive situations that require a departure from the normal level of reasonable rates.

I don't say that any rates lower than our rates are made for special reasons but I do say that any rates on the Atlantic Coast Line lower than the I. C. C. rate are made for special reasons. There are some rates lower than the I. C. C. rates in intrastate commerce on the Atlantic Coast Line in Georgia and South Carolina for special reasons.

Same objection by Mr. Adair to defendants' Exhibit No. 48-B as was made to defendants' previous exhibits.

In reply to Judge Holden's inquiry about the continued effectiveness of the rates that are in my Exhibit 48-B, I now file Exhibit 49-B. This exhibit shows by tariff references the I. C. C. numbers on February 8th, 1929, through March 5, 1931. I call attention to the fact that while some of the numbers are the same, showing that the same tariff continued in effect without amendment during the two-year period. Others were changed but the rates, however, were not changed in the republication of the rates.

The exhibit thus identified by the witness was offered in evidence as defendants' Exhibit No. 49-B.

Same objection by Mr. Adair to this exhibit as was made to defendants' previous exhibits.

[fol. 2351] It is true that all of these railroads named in that Exhibit 49-B, to-wit: The Southern Railroad, Seaboard Air Line, Central of Georgia, Norfolk Southern, Nashville, Chattanooga & St. Louis, and the Charleston & Western Carolina Railroad, have comparatively recently put in these per car regardless of weight rates to some extent but not during the two year period.

I now offer in evidence Exhibit No. 50-B, which is a certificate of tariffs of Class 1 Lines, as certified by the Interstate Commerce Commission, other than are included in Exhibit 47-B, except the Southern Railway. Some of these railroads have lately, in the last two years put in these per car rates regardless of weight to some extent.

Same objection by Mr. Adair to defendants' Exhibit 50-B as was made to defendants' previous exhibits.

There are no point to point rates on these railroads which were different from these particular rates, that I know of, unless under the same conditions to which I have referred in connection with the previous exhibits of Class 1 Lines tariffs. I next offer in evidence defendants' Exhibit 51-B, which is a comparison of rates in 50-B and the rates in the I. C. C. scale. This exhibit contains the I. C. C. scale under the first column of rates and compares them with the rates of other railroads shown in explanatory notes at the bottom of the statement under the head of "Notes of Application." Not all of these railroads shown on Exhibit 51-B publish transit rates as well as these rates shown on this Exhibit 51-B. The Atlanta, Birmingham and Coast Rail-

[fol. 2352] road does not and the Georgia Railroad and the Atlanta & West Point Railroad do not and neither does the Western Railway of Alabama. The Atlanta, Birmingham & Coast Railroad, the Atlanta & West Point Railroad and the Western Railway of Alabama have put in per car rates to Montgomery but to nowhere else, and, of course, such rates were not in effect during the two year period. (P. 1060-B of Tes.)

The A., B. & C. Railroad does not have point to point rates that are lower than this rate shown in this exhibit for the A., B. & C. that I know of.

I heard Mr. Pope testify about the rates and he testified as to rates lower than these rates in this exhibit but they were to Albany, Georgia, and not on his railroad. They operated in part on his line but these rates are on the railroad between their own stations. I don't say that these rates are the top of any maximum rate that any railroad is expected to get, nor that most of them have their own log rates applicable on their line substantially less from one point to another. What Mr. Adair means is that all of these railroads made special rates during the time that these tariffs were in effect and I say that is not true.

Same objection by Mr. Adair to defendants' Exhibit 51-B as was made to defendants' previous exhibits.

A companion exhibit to 51-B showing that the rates in the tariff covered by Exhibit 51-B were in effect on February 8, 1929, until March 5, 1931, was offered as defendants' Exhibit 52-B.

[fol. 2353] Same objection by Mr. Adair as was made to defendants' previous exhibits.

(Mr. Perrin continues:)

The entry on exhibit 52, reading "Central of Georgia" should be "Columbus & Greenville." The Columbus & Greenville Railroad is one of the short lines in the Mississippi Valley between Greenville and Columbus, Mississippi.

I next offer Exhibit 53-B, consisting of certified extracts from tariffs containing transit rates of the more important Class 1 Lines, operating such transit rates.

Same objection by Mr. Adair as was made to defendants' previous exhibits and the further objection that the exhibit

consists of duplications of exhibits already filed in evidence at a former hearing.

(Witness continuing:)

I now offer defendants' Exhibit No. 54-B, which is an analysis of the rates as shown in Exhibit 53-B. This is a comparison between the I. C. C. scale shown in the first column of rates with the transit rates of all of these railroads, there being fourteen of them. These same railroads have made local rates that do not carry the transit feature, while the I. C. C. applies both locally and where the product is shipped, the I. C. C. scale has no provision for transit. The first column here is headed "Miles." The next column is the I. C. C. scale rate.

[fol. 2354] Item 1 on the second page which shows notes of application explains column 1. Those are the transit rates of the Illinois Central Railroad and the Yazoo Mississippi Valley Railroad, respectively, when for manufacture and reshipment via either of these lines, except that they will not apply to Memphis, Tennessee. For rates to Memphis, Tennessee, see note 3, below.

In column 3 you will find the transit rates that they published in this two year period as applicable to Memphis. Column 3 is applicable to points on the Illinois Central Railroad and the Y. & M. V. Railroad on the one hand to Memphis, Tennessee, on the other, when for manufacture and reshipment via either of those lines. Those rates are published as specific point to point "Reshipping" rates, but are herein reduced to scale basis. In other words, they apply from point to point, and in making this comparison we have reduced those point to point to milenge, and ascertained thereby what scale of rates applied in all of these situations. Now on the right hand column, No. 15, is an average, which is explained in note 15. This scale in column 15 represents an average of scales referred to under Notes 1 to 14, inclusive. It was obtained by arriving at a simple arithmatical average of the rates under the scales shown for each of the mileage blocks shown. In other words, you can take all of these transit rates of these various short lines, and get an average of them in column 15, and then make the comparison of these averages with the I. C. C. scale. Now for instance column 15, which is the column containing the averages, and the first line reads

[fol. 2355] It is arrived at by adding up all of the figures in that line from Column 1 to 14, both inclusive and dividing it by 14, and then the comparison is between the 2.42 cents, which is the average rate, and the I. C. C. scale rate of 2½ cents.

Now, if these transit rates shown in Exhibit 54-B are to be consolidated with rates of the Southern Railway, Seaboard Air Line, the Norfolk Southern and the N. C. & St. L., which lines do not publish transit rates, you will have the whole situation as to the log rates applicable interstate throughout the whole South on railroads that carry a volume of the log traffic. That is interstate as distinguished from intrastate, but many of these rates are the same for both interstate and intrastate. The intrastate rate is lower with respect to railroads that run in Georgia, North Carolina and South Carolina. These rates apply interstate and intrastate in Mississippi, without exception intrastate in this period. (P. 1065-B of Tes.) I am pretty sure of that. I just want to call your attention to one thing. That all of these rates are transit rates and they are necessarily lower than the State Commission in Mississippi has made. They are all scale points and they are applicable between all stations except in those cases such as Memphis where the description shows them applying to some special point. All of these rates are transit rates. Practically every one of these railroads in these columns I have shown as transit rates carry local rates that are so much higher than the I. C. C. scale that I don't think it would be fair to compare them with the I. C. C. scale. They would be two or three times as high as the I. C. C. scale. [fol. 2356] I don't compare them because I know that the transit rates moved the logs and not the local rates, and therefore, I have made no comparison, although the I. C. C. scale for our account applies locally as well as where the product is shipped.

By Mr. Adair:

Q. I believe you testified in this very case that 95% of the movement on your Road of logs was to saw mills, and consequently you didn't find it necessary to publish the transit rates?

A. I said this, that when we made our rates on logs, we made them for transit purposes, You are correct in your

idea that the bulk of logs we handle are for manufacture of lumber, and not necessarily that we get the lumber when it is manufactured, but they are made for the purpose of manufacture, and, therefore, we put our local rates on the same level as the lines in the Mississippi Valley, such as shown in column 5, meaning that they are transit rates. Now they carry their local rates much higher. May I mention another thing? We lose by that, because we have at these several ports quite a large exportation of logs, and the consequence is that instead of getting what ought to be paid, a higher level for local rates to the port, where it is shipped, we apply these I. C. C. scales which comply with the level of the transit rate of the lines that establish transit rates. There is no transit feature connected with it, for the log is loaded on ship and carried to Europe for manufacture there.

[fol. 2357] Q. You had in evidence what was your Exhibit No. 61-B in the proceeding before the Interstate Commerce Commission, and that shows where all the logs moved in this restitution period?

A. Relatively so.

Q. So that any export log that you have would be shown there?

A. I am not speaking with respect to export logs, I am not speaking solely as to Florida, that is for all of the ports all the way from Norfolk, all the way down the Coast.

The Illinois Central and the Y. & M. V. Railroads both have put in rates regardless of weight to various stations, these railroads being mentioned in Note 1, to Exhibit 54-B, but these roads do not have these rates regardless of weight to all stations. The Illinois Central has them to 18 separate stations on the east side of the river and this road has them generally on the west side of the river, but the Illinois Central as against these 18 has many times that many points for the manufacture of logs. I am not familiar with manufacturing points on the Illinois Central or Y. & M. V. Railroad where that rate does not apply, except this, you can make a comparison with the number of points that both the Illinois Central and Y. & M. V. Railroad publish rates per car regardless of weight to points in Mississippi and Louisiana, with 532 mills in those states that reported to the Department of Commerce. It is hardly reasonable that these rates may have been in effect to all 532 towns

but car reports give you the number of towns where there were mills. The Mobile & Ohio Railroad put in those rates to various points about 1932 and 1933, and the L. & N. has [fol. 2358] put them in over the entire system since 1931. And the Gulf, Mobile & Northern Railroad has put them in to some extent. I am talking about the years 1932 and 1933. The Gulf & Ship Island Railroad also put in these rates in 1932. I think there was a certificate of some kind that the Tennessee Central had these rates. This enumeration may take in every one of these railroads on that last exhibit but it is not indicative of anything to me that they did that. They all put them in after the restitution period. It has been pretty much of a struggle for railroads during the last two years from an economical standpoint. It has been a bare fight for life with most of them in the red. The railroads are not the only people; we have all suffered alike. I couldn't say whether the lumber companies began their suffering as desperately as the railroads in the early part of this period. I do not know that 1929 and subsequent years have been years of decreased activity in both the lumber business and the railroad business.

Now, following the exhibit just filed, I now offer another exhibit as defendants' Exhibit 55-B, showing that the rates in effect in Exhibit 53-B were in effect during the two year period (P. 1070-B of Tes.). This exhibit deals with the same railroads as the Exhibit 53-B and Exhibit 54-B dealt with. This is merely to show that the rates dealt with previously were in existence during the two year period.

Same objection by Mr. Adair to Exhibit 55-B as was made to defendants' previous exhibits.

The figures on this exhibit mean that the rates were in the tariffs covered by, for instance, the Illinois Central-Yazoo & Mississippi Valley Railroads, in the first items, I. C. C. 7308, February 8th, 1929, and in the same tariffs on March 5, 1931.

[fol. 2359] The Tennessee Central rates were the same rates in 1929 as was subsequently published in I. C. C. B-208 of March 5, 1931, etc. Now this note "A" should be "Rates Reduced from Level indicated by Note 2 of Defendants' Exhibit 54-B to that of Note 1."

I now offer another exhibit as defendants' Exhibit 56-B, which consists of certified extracts of tariffs on short lines, including local log rates applicable on such lines.

Same objection by Mr. Adair to defendants' Exhibit 56-B as was made to defendants' previous exhibits, and the further objection that the document *proports* to contain only isolated extracts of the particular reports of the Interstate Commerce Commission and they are duplications of tariffs previously introduced.

I next offer defendants' Exhibit 57-B, an analysis of the tariffs in Exhibit 56-B. Column 20 on this exhibit represents the average of columns one through nineteen, both inclusive, and comparing the rates shown under the column I. C. C. scale with the column marked 20, gives you a comparison between the average of all of these rates for the short lines. In addition, the exhibit contains the rates for each short line railroad entered on the second page of the exhibit. Those are local rates. These rates are on interstate traffic each description tells you, but some cover specific intrastate traffic. I wouldn't say they are mostly interstate because some of these railroads are very short, but the exhibit speaks for itself.

[fol. 2360] Same objection by Mr. Adair as was made to defendants' previous exhibits.

By Mr. Gutheim:

We figured the percentages at the bottom of sheet 1 by taking the rates in column one for instance, and adding them up, and then for the same mileage purpose you add up the I. C. C. scale and show what the percentage of the column there totalled is to the I. C. C. total. The additions are not shown on the exhibit, only the total.

By Mr. Adair:

I wouldn't say that the short lines usually charge more for all sorts of transportation than the Class 1 Railroads. I think we have an abundance of evidence here that the short line railroads are the ones which made the lowest possible rates of all of them. They are permitted to do so. As to intrastate traffic the State Commission usually recognizes the disability of short lines and permits them to charge something higher than trunk lines. There is no fixed ratio.

Direct examination continued:

Now I offer as defendants' Exhibit 58-B the certified statement from Classification reports, certified to by the Interstate Commerce Commission. The purpose of it is to tie up in a complete picture the rates in any of the tariffs that I have filed, in which they refer to certain classes. For instance, Class N sometimes applies on these logs, and these Classification items that I am now filing are the certificates that those Class N rates were applicable on logs, or Class P rates as you might find to be the case. You will find in some of the tariffs that I have filed, for instance, [fol. 2361] that the rates of some lines on logs are shown as Class P, and then you turn to this exhibit, this present exhibit, and you find that that classification of Class P on logs is specifically provided for in the classification. So this is merely to supplement the certified tariffs containing the rates and to show that the Class P, in that particular case, is the proper rate to apply.

The Class P rate is not the same rate as the testimony shows was in effect in Florida. The Class P rates are different in several states. There is not any single line of rates which is generally known as Class P rates.

The situation is this: Formerly freight tariffs carried classes 1 to 6 inclusive, and then A, B, C, D, E, F, H, and E was B, and H was F for instance, and then some of the State rates had J, K and L, and M, N, O and P, and now since the Interstate Commerce Commission and several State Commissions revised their whole system of rates, they have narrowed down to twelve classes, classes 1 to 12 inclusive. And these Class P rates, except in particular situations, intrastate, as in Florida, Class P rates have disappeared, and in some of the other States they still have the Class P rates, but generally speaking those car load rates, N, O and P, have disappeared as class rates, and commodity rates have taken their places.

The last named exhibit was offered in evidence as defendants' Exhibit 58-B. (P. 1075-B of Tes.)

[fol. 2362] Same objection by Mr. Adair as was made to defendants' previous exhibits.

Extracts from various tariffs carrying intrastate local rates on logs were offered in evidence as defendants' exhibit No. 59-B.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

(Witness continuing:)

These rates are generally in effect in Virginia, South Carolina, Georgia, Florida and Alabama and they were substantially in effect during the restitution period. This Exhibit 59-B represents intrastate rates within Virginia and three or four other states.

I next tender my Exhibit 60-B, which is an analysis of defendants' Exhibit 59-B. These are all intrastate rates. First I show the I. C. C. scale and in the first column of rates are the Atlantic Coast Line intrastate rates in Virginia, followed by the South Carolina intrastate rates on trunk lines operating in South Carolina. In Column 3 are shown the rates in South Carolina that went into effect on September 1st, 1930, after the South Carolina Commission had amended the I. C. C. scale and the reasons for the reduction then made by the State Commission of South Carolina was that the rates under the I. C. C. scale were higher than the North Carolina rates which were then charged by the North Carolina Commission. In column 4 are the Georgia local rates and they have nothing to do with manufacture and reshipment.

[fol. 2363] All of the logs that moved under the general Georgia scale would move under the so-called transit scale if they went from the manufacturer. I don't think there is policing of that transit scale. These Georgia rates are local rates where there is no reshipment of the product and those Georgia rates would apply to Savannah for export and these others would not. The so-called Georgia transit rate is a great deal lower than this rate. Anything that moves to a sawmill would move under the transit scale.

This last described exhibit was offered in evidence as defendants' Exhibit 60-B.

By Mr. Adair:

Column 3 in Exhibit 59-B is still the local rate in effect in South Carolina in intrastate traffic.

Q. I observe you have the Florida East Coast Railway scale shown on here for one, and as a matter of fact, you

know there are some exceptions to the point to point rates on logs on the Florida East Coast Railway, do you not?

A. I referred this morning to the three exceptions. In column 6 I refer to the Seaboard Air Line scale. That scale is expressed in terms of one thousand feet and 1-use ten pounds to the foot in producing that. It is true that in many instances where the logs weigh more then the scale would be lower in cents per one hundred pounds.

Court: A good many of these interstate rates are transit rates, are they not?

A. All of the lines in the Mississippi Valley, which include the L. & N. Railroad, the Mobile & Ohio, the Illinois Central and the New Orleans and Northeastern Railroad, have transit rates that apply interstate as well as intrastate, and they apply the same level of transit rates inter-[fol. 2364] state and intrastate. Now in the eastern part of the country the Southern Railway, Seaboard Air Line, Atlantic Coast Line and the Norfolk Southern their basis is to establish local rates on the same level as the transit rates in the Mississippi Valley, because as long as the transit rates in the Valley are so much lower than the local rates, the local rates don't have application, so they really handle their log traffic on their transit rates in the Mississippi Valley, and we handle our log traffic on the same level of rates but without the transit feature.

In an interstate shipment if the destination of the shipment is not on the line of the initial carrier, the initial carrier usually does not get any share of the outgoing manufactured product. Railroads don't establish transit operations at manufacturing points beyond their own railroad. For instance, the L. & N. Railroad's transit rates have no application to the transit rates on the Illinois Central. What I mean by transit is the carrying of the manufactured product from the point of manufacture. Transit really speaks of taking the product to the mill, manufacturing it and shipping it out of that mill over the same road. The product comes in on one road and the manufactured product goes out on the same road. The initial carrier gets no benefit when the destination of the shipment is not on its line for the shipment of the outgoing product. When the shipment is made which has a destination not on the

line of the initial carrier, there is a difference in the rate but it is very rare that logs moved from one railroad to another railroad. Now, there are long haul shipments of logs by shippers that handle logs from south Georgia, prac- [fol. 2365] tically out to Nashville, Tennessee, and Louisville, Kentucky, but that is for certain purposes to manufacture certain things which enable them to handle that log, but in the South the manufacture of logs is almost entirely a neighborhood proposition. (P. 1080-B of Tes.)

Same objection by Mr. Adair to defendants' Exhibit No. 60-B as was made to defendants' previous exhibits.

(Witness continuing.)

The next exhibit that I have to offer is 61-B, which is merely offered to show that the rates included in 60-B are really the rates included in Exhibit 59-B, and had effect during the two-year period.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

I am going into a little different line of testimony now, which is to compare the I. C. C. scale with the rates on other grades of traffic moving in the same general territory, having characteristics of the lowest type.

I offer, as defendants' Exhibit 62-B, a certificate from the Interstate Commerce Commission of rates in Florida on common brick, cement, lime, sand, slag, clay, gravel and stone.

Same objection by Mr. Adair to defendants Exhibit 62-B as was made to defendants previous exhibits.

Using the rates within the States of Florida that have been shown in Exhibit 62-B, in Exhibit 63-B, I compare revenue results on logs under the I. C. C. scale with similar results or with results not similar, but with results upon the transportation of sand, stone, gravel, common brick, lime [fol. 2366] and cement. I there show in the first rate column the rates per one hundred pounds in the I. C. C. scale on logs. The next column shows the revenue per car for the average loading of the cars and in the third column of revenues are shown the earnings per car per mile in cents on logs. Now, that is compared with similar information as to

rates per one hundred pounds, the revenue per car and revenue per car mile on sand. The foot note shows that the weight used on sand is the average loading stated by the I. C. C. in certain general investigations of the rates on sand and other building materials. I used our average loading of 56,471 pounds on the logs. At 80 miles the rate per 100 pounds shown in the first column is 5½ cents which is the rate under the I. C. C. scale. The second column represents the earning for the average car, based upon weight of 56,471 pounds per car and that comes to $31.06. $.3883 per car mile was earned.

The rate in Florida on sand is 4.44 cents per hundred pounds based on a loading of 100,000 pounds. It produces per car earnings of $44.40, while the car per mile earnings are 55.5 cents. A car of sand produces a great deal more money than a car of logs.

This exhibit was offered in evidence as defendants' Exhibit No. 63-B.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

By Mr. Adair:

This is common lime represented on this exhibit. I do not have the rate on lime rock here and I don't know what [fol. 2367] it was during this period.

I now present as Exhibit 64-B, a companion exhibit to defendants' Exhibit No. 62-B, merely to show that the rates in 62-B were in effect during the two-year period, or substantially so, and the foot notes reflect the exceptions there were supposed to be.

Same objection by Mr. Adair to defendants' Exhibit 64-B as was made to defendants' previous exhibits.

The next exhibit is 65-B and it consists of certified extracts from the tariffs containing rates on these several low-grade commodities, applicable intrastate in Georgia. I offer this in evidence as defendants' Exhibit 65-B.

Same objection by Mr. Adair to defendants' Exhibit 65-B as was made to defendants' previous exhibits.

I offer in evidence Exhibit 66-B, which is a comparison of rates and the per car and per mile earnings on the com-

modities included in Exhibit 65-B, comparing same with the rates and earnings on logs under the I. C. C. scale. The principle of this is identical with the principle on Exhibit 63-B.

Same objection by Mr. Adair to Exhibit 66-B as was made to defendants' previous exhibits.

To get the same kind of comparison throughout, the rates within the State of Georgia may be in some instances less than in the State of Florida, and in some of these rates we recognize the principle that the rates in Florida will be higher than elsewhere. This exhibit does not include lime rock, either; it only includes common lime. (P. 1085-B [fol. 2368] of Tes.)

Now, Exhibit 67-B which I now offer in evidence is offered for the purpose of showing that the rates in Georgia as shown in Exhibit 65-B were in effect during the two-year period, or substantially so.

Same objection by Mr. Adair as was made to defendants' previous exhibits.

I next offer Exhibit No. 68-B, which is a certificate of interstate tariffs applicable in, to and out of the State of Florida on these general low grade commodities, such as sand, gravel, crushed stone, common lime, etc., similar to the list of commodities that are included in the exhibits just preceding. These are interstate rates applicable to, from and between points in Florida for interstate application.

Same objection by Mr. Adair to defendants' Exhibit 68-B, as was made to defendant's previous exhibits.

I offer in evidence defendants' Exhibit 69-B, which is a comparison between the revenue results under the I. C. C. scale of log rates, with the revenue results under the rates on sand, brick, common lime and cement, which rates are shown in Exhibit 68-B. At fifty miles the average weight of a car of logs under the I. C. C. scale is 56,461 pounds and would have produced $21.45 of gross revenue and a car of lime moving the same distance would have produced $34.00 gross revenue. That is in north Florida. If that same car of logs had moved in the peninsula of Florida it would have produced $43.50 against the $34.00.

[fol. 2369] Same objection by Mr. Adair to defendants' Exhibit 69-B as to defendants' previous exhibits.

I next offer as defendants' Exhibit 70-B, a statement for the purpose of showing that the rates in 68-B were in effect during the two year period, or substantially so.

Same objection by Mr. Adair to defendants' Exhibit 70-B as was made to defendants' previous exhibits.

The next is Exhibit No. 71-B, which is a comparison of the I. C. C. scale on logs, with revenues thereunder, with rates and revenue on fertilizer in the South. As in the case of the exhibit previously considered, the log revenue is based upon the average loading, except that round numbers were used in order to prevent too much calculation. In other words, the loading weight of the logs was shown as 56,568. Subsequently it developed after the preparation of this exhibit, that the average weight of all these cars was 56,471 pounds, and while the difference is not substantial, or rather would not make a substantial change in any of the figures.

Q. Let me see if this illustrates Exhibit No. 71-B. If a car of logs weighing 56,568 pounds had moved 50 miles it would have produced a gross revenue under the I. C. C. scale of $25.46, and if a carload of fertilizer had moved the same mileage, it would have produced a gross revenue of $40.80?

A. No, you are off a line, it is $39.60.

Q. I meant to refer to 55 miles?

A. Then your figures are correct.

[fol. 2370] The above described exhibit was offered in evidence as defendants' Exhibit 71-B.

If a car of logs had weighed 64,000 pounds we would have had more revenue. At 45 miles you would have on the logs $25.46, the same as for 55 miles, and on the fertilizer $37.20 for 45 miles and for 55 miles you would have on the logs $25.46, and on the fertilizer $40.80.

Same objection by Mr. Adair to defendants' Exhibit 71-B as to defendants' previous exhibits.

I now take up 72-B, which is a comparison with the revenue results of cullet, which is broken glass. There is no comparison with the I. C. C. scale, only with the Cummer

scale. However, cullet is a commodity that moves generally throughout the territory to certain glass factories, and has wide application.

At 120 miles a car of logs under the I. C. C. scale would produce a gross revenue of $36.77, while a car of cullet would produce $90.00.

The last described exhibit was offered in evidence as defendants' Exhibit 72-B.

Same objection by Mr. Adair as was made to defendants' previous exhibits. (P. 1090-B of Tes.)

Q. Now, Mr. Perrin, from your experience as a traffic man, which you have heretofore described in this record, and from your study of the facts of this case, please state whether or not the rate scale known as the Interstate Com-[fol. 2371] merce Commission scale, which was applied for transportation of logs over the Atlantic Coast Line Railroad for distances not exceeding 170 miles, for the period from February 8, 1929, to March, 1931, was a just and reasonable rate?

A. I so consider it:

Objection to the question by Mr. Adair and motion to strike the answer of the witness.

Q. Now, if there be a distinction between a just and reasonable rate, and a just and reasonable charge, please state whether or not, in your opinion, the charge as made by the Atlantic Coast Line Railroad Company during the period mentioned, and on the basis mentioned for each of the shipments, was just and reasonable.

Objection by Mr. Adair.

A. In my opinion, the charges stated were entirely reasonable. The Brooks-Scanlon Corporation, the Wilson Lumber Company, The Wilson Cypress Company, The Cummer Cypress Company, The Putnam Lumber Company, the State of Florida, The Florida Railroad Commission and The Florida Railroad Commissioners were represented, or were present at the hearing before the Interstate Commerce Commission in this case. They may not have been personally present at all the hearings but they were at some and they have been represented at all of the hearings. I am not sure whether the Putnam Lumber Company

had legal representation or not but they did to the extent that they were represented by the Florida Railroad Commission.

[fol. 2372] Cross-examination.

By Mr. Adair:

There is only one commodity that I mentioned in these certificates of comparisons which we handle in trainloads other than logs, and that is fertilizer. That operation does not require a trainload movement of so many trains per week anywhere on our line. It operates sometimes so many trains per week but it is not on a schedule operation.

I don't know of any other instance on the Atlantic Coast Line during the period of restitution in which logs moved in such volume between any point of origin and point of destination in trainload quantities on regular schedules as moved in Florida during the restitution period. I couldn't testify about other railroads. I don't know of any such movement on other railroads but I don't know that they didn't handle them.

I don't think I discussed the trackage agreement which the Brooks-Scanlon Corporation or the Burton-Swartz Company had with our road over the Wilcox Branch. That agreement is still in force and effect. The Wilcox Branch constitutes some part of a haul from Hines to Palatka but not a substantial part. The bigger distance is beyond. A substantial part of the Wilson Branch is included in the Hines to Palatka haul.

The Brooks-Scanlon Corporation also has a trackage agreement in effect over the lines of the Atlantic Coast Line Railroad, or so much of it that constitutes the Wilcox Branch, but this agreement was never used. Yes, it could be used any time they wanted to use it.

[fol. 2373] That agreement was made about the time that the Interstate Commerce Commission made this unlawful order prescribing intrastate rates in Florida. It was made as part of the conditions and consideration of the sale of the L. O., P. & G. Railroad to the Brooks-Scanlon Corporation.

The rates contained in the Burton-Swartz Cypress Company trackage agreement was in force and effect throughout the restitution period.

Q. In these various contracts for trainload movements that you had at one time in the Carolinas, you indicated that those agreements might have a different service now because of the higher wage cost that you have on your railroad, and that all other railroads have.

A. Yes, sir, so far as a rate is concerned. We were not making a rate in 1929 or 1930 that we might have made in 1908 and 1913.

It is true that since 1913 we have had two horizontal increases in our rate of 25% each. And one ten per cent reduction. That constitutes a net increase of about 40%, and on the other hand the expenses have grown 200%. (P. 1235-B of Tes.)

I expect the wages are at least twice as high now as they were in 1913. That is expense of labor. It is true that we have greatly increased the efficiency of our operations, but not without tremendous expense.

I have not heard that the Interstate Commerce Commission has lately refused to grant another horizontal increase on all freight rates.

[fol. 2374] Q. You have never heard of the so-called "15% case?"

A. The Interstate Commerce Commission left the matter so the railroads could continue that 15% increase and they are doing it wherever practical.

Q. But that was not a 15% horizontal increase on all freight?

A. I was speaking of the emergency charges. Is that what you had in mind?

Q. Yes, they asked for a fifteen per cent. flat increase on everything?

A. Yes, sir. They gave them an emergency rate. That did not include logs nor agricultural products. It did include short logs but did not include long logs. The Florida rate on short logs should have been increased. It is in the tariff to do so. Those increases were made a year or more ago. I don't think we were in litigation about that, so far as the State of Florida is concerned. The Commission extended the emergency charges until September. Since the two-year period all of these roads in the South and Southwest, including the N. C. & St. L. and the L. & N. Railroads, were putting in these per car rates regardless of weight

which the Interstate Commerce Commission has declared are substantially on a level with the Cummer scale.

Q. And the 15% surcharge was increased and the reduction in the log rates occurred during the same period, didn't it?

[fol. 2375] A. During the two year period?

Q. No, during the restitution period.

A. They have all taken place since 1931. In other words, the Interstate Commerce Commission authorized an increase in the surcharge on a great many commodities and products of transportation in the last two years and within those two years many railroads in the South and Southwest have reduced their log rates to what the Interstate Commerce Commission has declared to be substantially the level of the Cummer scale.

Objection to these questions by Mr. Alston and motion to strike the answers.

I should say that it is more economical per one hundred pounds or per thousand feet to transport 64,000 pounds of logs than it is 40,000 pounds.

I am familiar with the decisions of the Interstate Commerce Commission in docket 18364, dated July 5th, 1932. The decision handed down last July with respect to the Florida log rates, that is still in litigation. I accepted as correct that in that report which is 186 I. C. C. 157, the Interstate Commerce Commission said that during the second year of the two years restitution period there moved on the Atlantic Coast Line Railroad only 296 cars of pine logs, upon which the total gross revenue for pine logs in the State of Florida intrastate, from mills was $5288.54. I don't know who made the calculation. I don't think I made that calculation. They did make that statement. That was roughly speaking for the year commencing February 1st, 1930 and ending January 31st, 1931. But you will [fol. 2376] find where all of these rates that these lines have put in, regardless of weight, that their traffic has diminished tremendously since the new rates went in. It is not a case of the lower they put the rate the less they shipped but it is due to depressed conditions where nobody is shipping logs under the new rates. I don't recall that about three years before this second year of the resti-

tution period that we received in revenue from trainload movement of pine logs alone in the neighborhood of $500,000.00 per year. I don't recall that the Interstate Commerce Commission in the same report found that during the second year of the high rate the total revenue from cypress logs was $36,387.01 and the total number of cars was 1,566, exclusive of the trainload movement from Hines to Palatka, and exclusive of the movement to Homosassa.

I don't know how anyone divided the log traffic between pine, cypress or anything else. There was no testimony that I gave that brought on such division of traffic. It is true that the Interstate Commerce Commission used those figures but I don't know where they got the information. (P. 1100-B of Tes.) Certainly the Commission had no information as to how much the pine log movement that the Atlantic Coast Line handled was, or how much cypress movement there was. I don't see how it is possible to make such an analysis from my exhibit No. 61, which was made before the Interstate Commerce Commission. In fact, in many cases you see cars loaded with both pine and cypress logs. I don't recall that the Commission stated that [fol. 2377] for hardwood logs there were shipped during this second year of the high rate, 1,342 cars, with a gross revenue of $28,658.96, but I will take your word for it, if it is in there.

As I understand it, we shipped only pine logs to the Brooks-Scanlon Corporation at Eastport. The Interstate Commerce Commission has made quite a number of rates in the east and in the Middle West on a basis of 65% of the lumber rate. The lumber rate in Florida is Class P for a minimum of 30,000 pounds. I do know that the Seaboard Air Line went to Court to file the claim to fight the action of the Florida Commission in reducing it to 24,000 pounds from 30,000 pounds.

Assuming that the rate on lumber from Hines to Palatka is 8½ cents per one hundred weight, 65% of that would be whatever you figure it, but that is no criterion for the reasonableness of rates on logs, because the Florida Class P rates are tremendously lower. I didn't say that anything that would be 65% of the lumber rate would be a very high rate for logs. I said if we went beyond the border of the Southern territory to get a comparison of log rates in that

territory as a means of determining the reasonableness of log rates in the South, we would find in that territory in the North that the Interstate Commerce Commission had made the log rate 65% of the lumber rate but in order for that to be a test of reasonableness you would have to test the lumber rates in that territory with this territory. 65% of the lumber rate in Florida would be substantially lower than the log scale prescribed by the Interstate Commerce Commission. It does not follow that the Interstate Com- [fol. 2378] merce Commission would deduct 65% from the low Class P rates in Florida as a proper measure of log rates, merely because they made 65% for the higher lumber rates in the North. Lumber rates in the North are very much higher than they are in the South. These rates that I have testified about and with respect to which I have filed exhibits, are maximum rates, but if you mean that if every one was prescribed as a reasonable maximum rate, that would depend upon circumstances upon which the rates were established. The rate may have been filed by the railroad itself. None of them that I know of except the I. C. C. scale was prescribed as a minimum rate. The I. C. C. scale was prescribed by the Interstate Commerce Commission as a maximum rate and made a minimum rate in Florida. We can reduce the interstate scale provided we don't make any lower rates in Florida than we make interstate. In other words, the Commission desires a parity between interstate and intrastate rates.

Q. I now ask as a matter of interest if you understand that you would have had the power under this order of the Interstate Commerce Commission that was set aside, to have charged less than the minimum rates prescribed for Florida?

Objection by Mr. Alston.

A. The Interstate Commerce Commission established the I. C. C. scale by order, applicable from Florida to Georgia, and they also prescribed the same rate as minimum in Florida, because of the fact that the lower rate in Florida than the I. C. C. scale would be discriminatory against Interstate [fol. 2379] commerce. The I. C. C. scale they prescribed from Georgia to Florida was lower than that which previously existed. We knew that they were going to order us to put that rate in and they did order us to do it in every other interstate situation.

Redirect examination.

By Mr. Alston:

The shipment of logs to Milldale and Eastport has entirely ceased. We had only two or three hundred cars to Eastport that moved after February 8, 1929. All of these didn't move in trainloads. Whether they were moved in trainloads or car lots up to February 8th, 1929, they moved at the same rate. Just prior to that date the Brooks-Scanlon Corporation had already moved their mill to the forest and established themselves. What we moved for them from Eastport after February 8th, 1929 was some loads that they had manufactured before abandoning the Eastport plant. (P. 1105-B of tes.)

Q. Have you heard any of these Mill owners, or representatives of these Mills state that it was more economical for them to move their Mills to the forests?

Objection by Mr. Adair that the question calls for hearsay testimony.

A. I have. Mr. Fleishel testified to that effect as to the movement that the Putnam Lumber Company had decided upon long before this matter came before the Commission and there are other statements that will appear in the record. I regard it financially advantageous to the Atlantic Coast Line Railroad that those shipments to those mills stopped [fol. 2380] because in the first place the logs were handled across the State of Florida and was done at a revenue less than the cost of the service.

Objection by Mr. Adair.

And second, the revenue from the products of these logs manufactured in the neighborhood of the woods themselves, that is, the lumber revenues are much more remunerative than the revenues obtained from the logs. Of course, the purpose of carrying the logs to Milldale or Eastport was to get them to the water. A large proportion of the logs were shipped by water, so in that case the Atlantic Coast Line Railroad Company got only the revenue from the transportation of the logs. Now, if that should be less than the cost of the service we certainly would not be paid for handling the logs but as long as we handled the lumber products for

very much longer hauls at very much higher rates per hundred pounds we were much better off from a revenue standpoint.

Recross-examination.

By Mr. Adair:

I would say that the movement of these log trains to Milldale and Easport produced revenue less than the cost of service, after the labor cost had gone so high. By the cost of service I mean the expense of conducting the service. I don't mean the out of pocket expenses. I mean all of the expenses. If we were handling the movement for less revenue than the cost, of course, we were better off not to have the movement than to have the movement.

Yes, in 1928, the Brooks-Scanlon Corporation paid to [fol. 2381] our Road $353,136.00 for the transportation of 17,053 cars of pine logs. I do mean that we were better off without that seventeen thousand cars of business, all of which was handled in trainloads, shuttle trains in the night time, and in many instances two trains a day. We wouldn't like to have it back at those rates. We wouldn't like to have that buiness back at the rates prevailing, I mean at the Cummer scale rates. In my opinion no rate lower than the rate fixed by the Interstate Commerce Commission ought to be applied to this transportation for either trainload or less than trainload movement.

I would say that I read this opinion of the Interstate Commerce Commission in the report of July 5, 1932, 186 I. C. C. 157 but I will have to take your word for what it was because that was a year ago.

Assuming that the Interstate Commerce Commission found in that case that the total haulage cost, plus taxes, plus $6.10 for return on investment, amounted in the aggregate to $27.52 per car for that trainload movement and assuming that the revenue from that movement was $41.50, I would still say that I think no other rate than the I. C. C. rate of $41.60 ought to be charged for that movement because there is something more to be considered than the mere cost of transporting those logs. In the first place, whatever rates you are going to charge on those logs have got to apply simultaneously and freely to any number of logs or any number of cars of logs in the State of Florida or

[fol. 2382] elsewhere. You can not separate train loads from less than trainloads when you are making reasonable rates on logs. You will have to consider the expense of handling one car in the same way that you consider the expense of handling a train load of cars. And in the next place, there is no consideration given at all in your figures to the value of the service to the shipper, which is a very important factor in testing the reasonableness of the rate.

Q. Do you mean it is worth $41.60 to the shipper to transport these logs from Hines to Palatka? Don't you know it would break the back of any one trying to run a saw mill?

A. They ship logs five times as far as that.

Q. For what sort of operation and in what quantities?

A. If you will allow me to answer the question, the limit of the value to the shipper depends upon the value to him of the logs at destination, and that value would vary according to the use to which he would put the logs. The value of the service in getting the logs would vary, but there are situations in which logs move two or three hundred miles, and 15 and 20 cents a hundred miles was paid. It is worth that to the shipper. I am not talking about any particular line of logs. You cannot say definitely in dollars and cents how much value the service is to the shipper. I do think that the value of that service to the Wilson Cypress Company was $41.60 a car.

It is true that the Brooks-Scanlon Corporation, that rather than transport them, wrecked their mill at a cost of $3,250,000.00 or more, but they relieved the Atlantic Coast Line [fol. 2383] Railroad of a constant drain on its revenue. It was worth $41.60 a car to the Brooks-Scanlon Corporation.

Q. Did you hear Mr. Foley say in this very record that he would have been there at Eastport sawing logs today if that Cummer scale had not been increased as it was?

A. I couldn't quote Mr. Foley, as I think it would be improper to do so. (P. 1110-B of Tes.)

By Mr. Alston:

Q. Mr. Perrin, Mr. Adair has quoted to you from certain statements of costs ascertained by the Commission in its report in this case, 186 I. C. C. I have before me pages 186 and 187 of that same report of these same costs where the Commission is dealing with the ra[illegible] at the average distance of 81.6 miles. After ascerta[illegible]ng that the cost per car for that mileage was $24.69 the Commission said:

"The above figures undoubtedly understate the cost of transporting logs in Florida for several reasons. One of these is the costs per unit in Florida are higher than the average for the entire road or system including Florida. Another reason why the computation for basis of costs per unit for system understate the cost for transporting logs in Florida, is that these average costs per unit do not include anything for the joint facility and equipment rents. As heretofore indicated, the cost is also understated because it does not include the cost of transporting non-revenue or company freight."

Do you agree with that?

A. I will have to accept the word of the Commission for that because I have made no close study of it. So far as I know the Commission has not undertaken to state the cost for transporting the Hines to Palatka freight or transport-[fol. 2384] ing the car of logs for average distances. The figure that has been mentioned by Mr. Adair is at least associated with the situation that it is an understatement of the costs. It is true that the Interstate Commerce Commission, after having made those figures, put this rate at 6.5 cents for 120 miles for the Hines to Palatka movement and they put it at that figure after long consideration of all the evidence in this case and they have made two reports to that effect. It is true that they made the report on August 2, 1929, fixing it at that, and then following the litigation and during the period wherein the lower Court has sustained the Commission, those rates which the Commission fixed, went into effect, and then when the Supreme Court set aside those rates for the reason set out in its opinion, and after the litigation that followed the Commission fixed it again at 6.5 cents and then reopened the case and heard the evidence as to all of these rates and then refixed it and the Court refused to enjoin that rate. The cost of service is the lowest possible limit at which a rate can be fixed. The cost of service is the better test to show whether the rate is paying or not, to prevent it from being confiscatory.

A rate which simply produces a return to the carrier is not necessarily a fair or just rate. The Commission did demonstrate twice that these rates now under consideration were just and fair during the extraordinary years of 1929 through 1931. During that period the shipment continued in train-load lots to the Wilson Cypress Company over the same

track up to the time part of their mill was burned in the latter [fol. 2385] part of the two year period there was a growing decrease in the demand for lumber and logs.

I think there is a larger volume of evidence in this case than there was before the Interstate Commerce Commission on either of the previous occasions, but at the same time I cannot see that there is very much new character of evidence that has been added to it. I think that the addition to this testimony naturally increases the volume but I cannot yet find there is very much of a new character of evidence before the Special Master as before the Interstate Commerce Commission. In this case, a vast quantity of rate comparisons has been produced by the Claimants, which were not in the other case, but we are dealing with a period when those rate comparisons were not in effect.

I don't recall any rate comparisons with rates substantially lower than this I. C. C. scale, which were in effect during this very restitution period having been offered by the claimants. It is true that a large quantity of cost studies dealing with these trackage agreements which the Atlantic Coast Line and other railroads had with lumber manufacturers, and projecting the cost of transportation under these agreements have been produced in this case, but you will have to let me put my own construction on the value of these trackage rights. They have no effect at all upon the conclusion as to reasonable rates for the Atlantic Coast Line log service.

Q. Is it not a fact that we have large volumes of statistics here by Mr. Saunders, which were not before the Interstate Commerce Commission?

[fol. 2386] A. You will have to let me answer that by putting my value on that too. I am no accountant, but I got enough of it to find that that was largely a fantastical effort. There is no temper about it, but I do think that anyone trying to figure out what it would cost to handle logs, and find what a reasonable cost for handling logs would be, ... very far fetched to bring in a reciprocal arrangement between railroads (P. 1115-B of Tes.) to be used in emergency cases. That reciprocal item was produced by me in response to your demand that I produce any data that we might have that might cast any light upon the rental of equipment, engine and power and I was asked a lot of questions about it before I was ever asked for the items and the same questions were asked Mr. Lamb, running to the same point as

that reciprocal arrangement covers, about the interchange equipment between carriers, the rental charges, etc.

These tariffs in Exhibit 27-B are per one hundred pounds or per one thousand feet. I gave Mr. Green due credit for his industry in searching out these figures but I don't think that is very valuable testimony, or that the Commission would have given any attention to it. There are no rates in that exhibit 27-B applying to transportation of the kind involved here, under the same kind of conditions, which were lower rates.

I think the revenue under this trainload movement under the Cummer scale is less than the cost of the movement. I don't mean the out of pocket cost, I mean under the Cummer scale.

[fol. 2387] We were not getting revenue out of that movement that was sufficient to meet all of the requirements of reasonableness. I don't know what the costs were and nobody knows that. I know that the Wilson Cypress Company is no longer shipping logs in trainloads, or to any large extent in any single car load, but I also know that there are many, many cutters of lumber who are not operating at all, and great big ones too, or have not been until the recent revival in the lumber business.

In my judgment, the transportation between Hines and Palatka, at the rate it was done for the Wilson Cypress Company, cost the Atlantic Coast Line Railroad money. I don't know what the cost was.

By Mr. Adair:

I wouldn't say that the ratio of movement on our railroad is about eight to one intrastate as against interstate, because in a situation other than Florida, we have a very large interstate movement.

I did testify that the log traffic was tremendously an intrastate movement to the extent that log traffic moves on relatively short hauls and naturally, we have more short hauls in the state intrastate than we do interstate but it so happens that in situations other than Florida our interstate movement is as large or larger than the intrastate movement within that state. The largest part of our log traffic is from North Carolina to Virginia and also with respect

to South Carolina, a large part of the log traffic goes to North Carolina to the furniture manufacturing district. I know of no movements in logs from Florida to Georgia or from Georgia to Florida.

Defendant closed.

[fol. 2388] R. C. Barrier, recalled to stand by claimants, testified as follows:

Direct examination.

By Mr. Adair:

I have already been sworn in this case, and I am the same R. C. Baptist that testified in Jacksonville in this proceeding. I testified at the hearing in Jacksonville before the Master that in my computation with respect to the cost of transporting logs from our timber in the vicinity of Hines to Palatka, over the Live Oak, Perry & Gulf Railroad, the Seaboard Air Line Railroad and the Georgia and Florida Railway, that I included in my costs structure approximately eight miles of the Main Line tram road. The cost of that construction was $2,500.00 a mile. To get that cost I went back over our past performances in main line construction in the woods. By main line construction in woods I mean main line tram road construction. The various elements that went into the construction of that main line tram road are the chopping out of right of way, and for the year 1929 it was costing us 3½¢ per foot, and throwing up the grade. That is $184.80 per mile. The next item was the grading using a P. & H. drag line machine for drawing up the grade. A. P. & H. drag line machine is a gasoline operating machine that has a drag line buckling that you reach out with, swings out with a drag bucket, and swings back into the center of the track and drops the dirt. (Test., p. 1120B). P. & H. stands for Powling & Harnish feeder. They are the manufacturers. We throw that grade for 3½¢ a foot, that is, $184.80. It cost 3½¢ per foot for clearing off the right of way; that is, 3½¢ per lineal foot. Grading cost 3½¢ per foot or $184.80 a mile. [fol. 2389] Picking and laying rails is the next item; that figures 31¢ per lineal foot. That is for taking up and laying down track and the filling in the track and surfacing.

That comes to 31¢ a foot, or $1,636.80 per mile. In the course of our work we had a lot of ties that are thrown out and replaced, and that figures 6¢ per foot, or $316.80 per mile for replacement of ties. The next item is replacement of spikes, $176.80 per mile. Those figures total $2,500.00.

We did not have to buy the rail for that eight miles of tram road because we have the rail on hand. If we are not using it in one place we use it in another. It is a continuous movement. If we went out to Alton or Mayo, as the case may be, we would use the rail that we were then using and are now using to go out to Hines.

I have a schedule showing the general holdings of the company out there. (Indicating on map.) This is the Wilson Cypress Company. Hines is located on the Atlantic Coast Line Railroad. (Indicating the point on the map and also the camp.) The camp was situated at the same place in 1929. It is four and a half miles from Hines to the camp. We were then operating in Township 6, Range 11. That is about 14 miles north of Hines. It was approximately seven miles from our point of operations in 1929 to Alton. Alton was where we proposed to tap the Live Oak, Perry & Gulf Railroad with our main line tram road. Besides the tract in which we were operating during the Winter and Spring of 1929 we had all the timber holdings in Township 6-12, and in Townships 6-11 and 6-18. That was all uncut except a portion of 6-11 which was cut; I would say that 25% of it was cut. When I say 6-11 I mean Township 6, south of Range 11 east. We had some uncut timber in Township 7, Range 12, and in Township 8, Range 12, and Range 13. As compared to what was in the other Range about half of the timber uncut was in Township [fol. 2390] 6, Range 11, and Range 12. 6-11 and 6-12 were substantially closer to Alton than to Hines. The timber in 7-12 would be about equidistant from Hines and Alton. The timber in this Township was substantially nearer to Hines. (Witness, at this point, marked the tram road on the map "TT", meaning Tram Road Terminus.) This point in Township 6, Range 11, was the terminus of our main line tram line in 1929. The Wilson Cypress Company owned about 38 miles of steel rails, of 45 and 50 pound rail. Yes, had we gone out by Alton we could have taken up the rails in use at the south end and utilized them in constructing the main line tram road at the north end.

"Q. Based on your study of what was then in contemplation, can you say whether or not your own cost would have been greater or less in taking the logs out to the Live Oak, Perry & Gulf Railroad at Alton, or to Mayo, as the case may be, or taking them out at Hines?"

(Objection by Mr. Alston.)

"A. I would say positively it wouldn't have been more. It was a very good chance of being less because there was a portion of it having a shorter haul."

(The map to which the witness testified was offered in evidence as Claimants' Exhibit 100-A.)

(Witness continuing:)

I have with me a Township map showing the layout of Township 6, Range 11, of our timber. (Page 1125B of Tes.) This map which I now produce is a Township map of Township 6, South, of Range 11 East. The heavy black lines represent our railroad construction that took place in that township. (Indicating on map:) Our main line is marked "Main Line." Those laterals leading into the right and left of the main line are the sub-line and spur tracks. We construct our main line through the middle of [fol. 2391] the timber as the main artery for the timber to come out on, and every two miles or as near as we can come to it we put in a sub-line going off on either side. We log up on side and come back down the other side. Spur tracks are tracks that come off the sub-lines into the timber wherever it might be located. The location of the timber governs the spur track construction. Th-se laterals running over there to the east and to the west are called sub-lines, and the black lines running off from the sub-lines to the north and south of them are the spur tracks. The point marked "TT" on this map is the northern terminus of our main line. The two light lines running northeastward from that point marked "TT" indicates an old railroad grade known as the Standard Lumber Company's tram road main line site. It ran cars to Alton. Had we gone through Alton we expected to construct our tram road main line on that right of way or on that grade. The Standard Lumber Company gave us all rights to it, to any right of way to anything that was in there. We were already using that right of way for our main line tram line south of the north-

ern terminus of it. That right of way ran all the way from Alton to Hines. Assuming that we did construct our additional eight miles of main line tram line over that Standard Lumber Company right of way the chances are that it would cost us less than $2500.00 per mile to do so, and that includes the taking up of the tracks down to the south.

Had we effected this trackage arrangement we expected to get our loaded cars to the common carrier tracks of the Live Oak, Perry & Gulf Railroad in the same manner that we put in the logs to Hines, and that was by our own equipment and by our own locomotive. That would be a different locomotive from the locomotive we would have operated over the lines of the common carrier. The size of the locomotive that we use to deliver logs to Hines in [fol. 2392] 57 tons. That is the same locomotive we contemplated using had we effected the trackage agreement with the Live Oak, Perry & Gulf Railroad, Seaboard Air Line and the Georgia & Florida Railway. We would have had the same connection at Alton that we have at the present time at Hines. That is, our locomotive would bring the cars down to the point of intersection between our main line tram line and the common carrier, and we would push them out on the track of the common carrier and assemble the train on the tracks of the common carrier and then the engine would be hitched to one end and the caboose to the other and it would go off.

(Last map identified by the witness was offered in evidence as Claimants' Exhibit 101-A.)

(Objection to both Exhibit 100-A and 101-A by Mr. Alston as irrelevant and immaterial.)

We are not now shipping any logs from Hines to Palatka. We are cutting some of our timber in the vicinity of Hines; we have a small saw mill in there. The capacity of the mill is about 600,000 feet per month with the day shift, and 1,200,000 feet with the double shift. We are operating the single shift now. The mill is located at our camp which is about 4½ miles from Hines. We are now cutting railroad timbers and some lumber, about 30% into railroad timber and 70% into lumber. We have been operating this mill since January. The bulk of our railroad timber has gone

to the Atlantic Coast Line and the L. & N. Railroad. (Tes. p. 1130.) It all went outside of Florida except one car. We ship our boards rough.

Cross-examination.

By Mr. Alston:

It is right that this first map covers timbers in Taylor, LaFayette and Dixie Counties, and I have marked a place here as the terminus of our steel. If we should build to Alston we would have ripped our rails south.

[fol. 2393] In ripping the rails we would have come from Hines and some would have come from east of the Camp. Yes, we still had timber south of this point where we would have ripped up the rails, south and east. There is a large volume of timber over in the eastern part of LaFayette County and the southeastern part of Dixie County; there is still some timber left in Township 7, Range 12, Township 8, Range 12, and Township 8, Range 13. This last tract that I have mentioned is in Dixie County.

"Q. Then, when you took up the rail south of this point here you would have left these other timbers without any rail?"

"A. This County over here was all logs, and we would have had no more use to place it there."

The only line that we would have built would have been this 2½ mile connection or we would only have had 2½ miles of track to build connecting through this bunch of timber in Township 7, Range 12, Township 8, Range 12, and Township 8, Range 13. It probably would have come from the southeast County, Township 6, Range 11. There was nothing in my estimate for the cost of rail. I don't know what 56 pound rail would have cost at that time. We would have used 45 and 50 pound rail; that is what our equipment is. We space our cross ties about 2 feet across, and that would have been about 2700 ties to the mile. The ties would not have been treated; that tram road construction does not line up at all with railroad construction. All of our railroad construction in log operations is continually ripping, and when we have ripped out some of the ties we find are rotten and not fit to relay we then replace them with new ties. I have put in $186.00 for replacing spikes

and bolts. That is for putting in new bolts. Whenever you rip off a bolt in ripping up a track we replace it with a new bolt. Now in ripping a track there is some loss in [fol. 2394] spikes, but we utilize the old spikes and old bolts and old ties as far as they will go in laying that track. This item of 3½¢ for chopping off and clearing right of way includes opening the right of way for the construction of the railroad, approximately a 20 feet wide opening, cutting down the brush and cutting down the trees. Yes, that is a right of way cleared through the woods. In some places the woods are very heavy, and in some places very thin.

Yes, I have grading at 3½¢ per lineal foot. We usually throw up a 12 foot bed, and the amount of dirt we put in depends on the type of country we are going through. Some places require very little dirt and other places more. I couldn't tell you what the cost of moving a cubic foot of earth is; we don't work that way. The estimate is based on a lineal foot basis.

No, we didn't build the road. We are not still cutting timber in that tract; we have completely logged out of there, and are away from there now. We are cutting now only in Township 8, Range 12. (Indicating on map:) We did not build that road from the place marked "Camp" to the place marked here. We built it about here, a place about midway between the camp and that place. That track was in there for the time we logged this camp, I mean the first place I have marked on this Exhibit 100-A; it was in there for the time we were logging this County here and never has been moved out. That timber goes to the Wilson Cypress Company's mill now, and the lumber comes out to Hines, and goes to various concerns. Some goes over the Atlantic Coast Line, and all that is moved away from Hines is over the Atlantic Coast Line. We are logging in only this one place now (Tes., p. 1135B); the other is logged out.

I did say that we could have bought a locomotive of 333,000 pounds like the one the Atlantic Coast Line was using [fol. 2395] on our log train for $35,000.00. That was offered to us by the Georgia Car and Locomotive Works. We were going to use it on the Live Oak, Perry & Gulf Railroad from Alton to Live Oak, and over the Seaboard Air Line, from Live Oak to Lake City. The reason we didn't go any further was we didn't think the L. O., P. & G. Railroad was of sufficient strength to hold the train.

Redirect examination.

By Mr. Adair:

"Q. What is the custom of lumber companies with respect to rail purchases? Do they buy new rail or second hand rail ordinarily?"

(Objection by Mr. Alston.)

"A. Second hand or relaid rail."

Concerning the question relating to our indecision whether to build the line into Mayo Junction or to Alton I will say, that at that particular time the L. O., P. & G. Railroad had just been taken over by the Brooks-Scanlon Corporation, and they were going to remodel that Alton to Mayo branch, but they were undecided as to what size rail they would put down and to what extent they would run, whether to stop at Mayo or Alton, but there was just a mile's difference between the two places. It was contemplated that we might have to build on to the further point; it was possible we would have to go to Mayo, instead of Alton, as a matter of fact. They were doing a considerable amount of work on that line, especially between Live Oak and Perry. Yes, if we were going into Mayo, instead of Alton, most of the difficulty from other lines would be obviated.

(Witness excused.)

(Bill of sale made by the Atlantic Coast Line Railroad Company to the Putnam Lumber Company under date of December 24, 1931, conveying to that company certain rail therein described was offered in evidence as Claimants' Exhibit 102-A.)

[fol. 2396] (Objection by Mr. Alston that the exhibit offered is immaterial and irrelevant.)

(The following letter from the Atlantic Coast Line Railroad Company to Mr. L. M. Fleishel, President, Putnam Lumber Company, Shamrock, Florida, was offered in evidence as claimants' Exhibit 103-A:

"Referring to conference in my office on the 16th:

"We offered you the rail and angle bars, which material is now in your possession and covered by contract dated

December 8, 1924, for $18 per ton, and on August 30, 1930, we billed you for $43,565.60. I now wish to confirm what I said to you in conference on yesterday, and that is we are willing to accept for the material $14.00 per ton cash. This will reduce the amount of our bill to $33,884.36, which, I understood from what you had to say, would be satisfactory to your company. If this is correct and you will send me check for the amount named, I will have bill corrected and forward you bill of sale.")

(Objection by Mr. Alston to claimants' Exhibit 103-A.)

[fol. 2397] E. C. Green, recalled to stand by claimants, testified as follows:

Direct examination.

By Mr. Adair:

I am the same E. C. Green who has testified before in this case before the Master. I listened to Mr. Perrin's testimony, and paid particular attention to these instances he pointed out whereby the point to point rates were operative by the logging lines between competitive points, served by a line which had a shorter haul. After hearing Mr. Perrin's testimony I have re-examined abstracts which I made of the original tariffs on file with the Interstate Commerce Commission in Washington, and have found numerous instances where rates which are lower than the I. C. C. scale by as much as 90 per cent, or by as much as 10 per cent or in such cases 25 per cent lower than the I. C. C. scale, have been and are now operative by numerous railroads in the Southeast, and by practically all of the trunk line railroads in Texas. These tariffs, or excerpts from them, are in evidence. In the southeastern section of the country the Central of Georgia Railroad in I. C. C. 2772, effective August 1, 1930, still operates a rate on logs from Sandersville, Ga., to Macon, Ga., which, according to my opinion and my best judgment was not published or created by any sort of competitive conditions. That rate is in evidence. The Georgia & Florida Railroad, in I. C. C. 588, effective May 6, 1931, operates a comparatively low scale for distances of 200 miles, which rates are not created by

any sort of competitive condition. The Graham County Railroad, I. C. C. 16, a scale of 15 miles, was not created by competitive conditions. (Tes., p. 11401.) The Gulf, Mobile & Northern Railroad, I. C. C. 1128, published a scale over the New Orleans & Great Northern Railroad for a [fol. 2398] distance of 170 miles, not created by competitive conditions. The Gulf, Mobile & Northern Railroad, I. C. C. 1085, published a rate for 80 miles from Pascagoula, Mississippi, down to Mobile, Alabama; the Interstate Railroad, I. C. C. A.-192, a scale for 40 miles; the Laurinburg & Southern, I. C. C. 118, a scale for 30 miles; the Mississippi Central Railroad, I. C. C. 610, published a scale for 170 miles, which has been in effect since April 15, 1925, and was not created by competitive conditions.

I will refer to the scales of the Tennessee, Alabama & Gulf Railroad, running into Chattanooga, the Tremont & Gulf Railroad, the Alabama, Tennessee & Northern, the Bonhamie & Hattiesville Railroad, and the Birmingham & Southeastern Railroad, and the South Georgia Railroad in southeastern territory. Now out in Texas the rates on these logs have been in effect for more than eighteen years at least; I mean these tariffs now in effect and now in evidence. The tariffs of the Texas Lines now in evidence and published in Agent Fonda's tariff No. 36-B have been in effect out there in Texas on the trunk line railroads at least eighteen years or more, and have been published under transit arrangements at so much per car, regardless of weight, and according to my best information and knowledge of the situation having been published prior to the time that the Railroad Commission of Texas itself was first established, and were rates voluntarily made by the Texas Railroads without any regard to any kind of competition by rail, by truck or by water. I have been in the lumber belt in Texas. I happened to be born out in that section. My father was one of the original people who logged that country. In addition to that, I personally spent three [fol. 2399] weeks making a survey of transportation conditions. There is no question but that the transportation conditions both as to the construction, operation and other physical conditions in the timber belt of Eastern Texas are worse than they are in the Southeastern territory, and worse than they are in the timber belt of Florida. And when I say worse, I mean the physical condition of the

country in the nature of hills and curves, the streams over which the railroads have to cross and things of that kind. Roughly speaking, I would compare the timber belt over Texas as to the general type of land, the railroad construction, and things of that sort, with the hilly country between Atlanta and Macon, Georgia. In other words, it is a hilly country and not a smooth, level type of land such as we have in Florida. In the course of my study of conditions out there I visited a large number of lumber plants, talked with a large number of railroad officials, and went to a large number of the mills, and my information is that even though the per car rates published for application over the trunk lines as well as the short or weak lines in East Texas, are comparatively low, that none of the lumber, or practically none, of the mills operating in 1928, 1929, 1930, or at the present time can afford or do pay these per car rates, which are in evidence as common carrier rates over the Texas lines. The transportation is in flat cars, pulled by engines owned and operated by the lumber mills themselves, at rates which vary anywhere from 25 cents a train mile for any number of cars in that train, up to $1.00 per train mile, and so far as my information goes, never in excess of $1.00 a train mile, whether that train consists of 10 cars, 50, or 70 cars, or what not.

(Objection by Mr. Alston to the testimony on ground that it is irrelevant and immaterial, that it is secondary evidence, that it is not the best evidence, and wholly too general.)

[fol. 2400] "Q. On your recent trip out there, to whom did you talk and from whom did you get this information with respect to the general custom for the operation of log trains, and of the going price per train mile for the operation of log trains?"

"Mr. Alston: Your Honor, that plainly asks for hearsay testimony."

"Court: Go ahead and I will rule on it later."

"A. From Mr. F. B. Wherritt, Sales Manager for the Sabine Lumber Company, selling the output of the Texas Long Leaf Lumber Company; from Mr. E. C. Hall, Sales Manager for the Weir Long Leaf Lumber Co.; from Mr. William T. Hancock, Traffic Manager, and H. T. Herndon,

Jr., Sales Manager for the Kirby Lumber Co. Their headquarters are in Houston, Texas. They have about eleven mills sawing all over Eastern Texas. From Mr. Clyde Miller, Sales Manager for the Carter-Kelly Lumber Company; from Mr. C. E. Halliman, Traffic Manager for the Houston Chamber (Tes., p. 1145) of Commerce; from Mr. J. W. Chartrand, Traffic Manager for the Waco-Beaumont, Trinity & Sabine Railway; Mr. S. T. Walker, General Manager, Mr. H. R. Saye, Auditor; Mr. S. S. Maury, Train Master, Colonel R. C. Duff, President, Mr. Paul T. Sanderson, Receiver, all of the W. B., T. & S. Railway; from a Mr. Epperson, Local Manager of the Sabine Lumber Company at Kettys, Texas; Mr. M. C. Moore, Rate Expert for the Mississippi Railroad Commission; Mrs. E. S. Woodward, Secretary of the State Board of Development in Mississippi."

(Objection to this testimony for the reason that it is irrelevant, that it is a conclusion, that it is hearsay, that it shows the condition of the transportation which he undertakes to describe as not the same as the conditions affecting the transportation now under consideration, and that it is not the best evidence.)

(Witness continuing:)

I saw these log trains in operation; I saw the cars, the [fol. 2401] locomotives, cabooses and I talked to some of the crew.

"Mr. Alston: We would like some time later to say whether we wish to cross-examine Mr. Green. We suggest that Mr. Green leave the stand now and that the case proceed."

"Court: All right."

(Witness excused.)

T. M. True, recalled to stand by claimants, testified as follows:

Direct examination.

By Mr. Adair:

I am Mr. T. M. True, and I have heretofore testified before the Master in this case. I was present when Mr. Per-

rin testified about a week or ten days ago. Mr. Perrin testified or gave the impression that the point to point rates that the Atlantic Coast Line Railroad had in effect, were unduly depressed on account of carrier competition, and that all of their so called low rates that were lower than the normal scale were due to certain conditions beyond their control.

(Motion to strike Mr. True's statement of Mr. Perrin's testimony, by Mr. Alston.)

Claimants' Exhibit 17-A is a photostatic copy of the Atlantic Coast Line Railroad Tariff, I. C. C. B-2555, effective January 3, 1929, and claimants' Exhibit 18-A illustrates the effect of that tariff and shows that the Atlantic Coast Line operates the point to point rates from 85 points of origin to 13 points of destination, which are lower than the so-called normal scale. These rates operate from points in North Carolina and Virginia to points of destination in North Carolina and Virginia, and to the best of my knowledge and belief the tariff is in effect to-day.

(Objection that the witness is undertaking to state the contents of a written document.)

"Court: The rule is that the admission of it is not reversible error if it coincides with the original evidence, if it is the same as the original evidence."

[fol. 2402] I can recall pertinent illustrations of the existence of the point to point rates on logs. I have casually examined the exhibits that are already in evidence here and have noted that claimants' Exhibit 21-A shows rates from points on the Seaboard Air Line Railway to Cheraw, S. C., in their I. C. C. A-7187, that are lower than the so-called general scale. Also, claimants' Exhibit 25-A shows rates to Cheraw, S. C., from Colesburg and Seals, Georgia, to St. Mary's, Ga., and in claimants' Exhibit 27-A, the Atlantic Coast Line Railroad Tariff I. C. C. B-2173 shows point to point rates from 231 origins in Florida to 21 destinations in Florida that are or were lower than the so-called general scale. This last tariff was cancelled in 1926. It is materially lower than the I. C. C. scale. In some instances it was lower than the Cummer scale; I so testified that there were some of the rates in there lower than the Cummer scale, but they vary. This tariff contains 21 points of des-

tination and 231 points of origin; that was in Florida. The Atlantic Coast Line Railroad had point to point rates on logs at various levels in effect in Florida until 1926, and it is true (Tes. p. 11503) that they still have point to point rates in effect in Virginia and in North Carolina, from many points of origin to several destinations which are lower than that general log rate scale, and this is shown in claimants' Exhibits 17-A and 18-A.

(Objection by Mr. Alston as not being the best evidence and as stating a conclusion.)

I have been in the traffic business about thirty years. I have been dealing with rates continuously. The volume of a movement to a particular destination is quite a factor in [fol. 2403] the making of the rate. Unquestionably a particularly heavy volume to a particular destination from a particular point of origin, or to a particular point of destination from several points of origin, will result in a lower rate than the rates applicable to casual car movements; where a shipper seeks some rate adjustment and appeals to the carrier their first question generally is to what extent the amount of the movement reaches. That is one of the main factors. Generally, my experience has been confined to the Southeastern Territory, and to some extent to the Southwestern territory. The rule which I have stated with respect to volume of traffic is not confined to any one railroad; it is generally located.

(Witness excused.)

J. W. Perrin, called by claimants, testified as follows:

By Mr. Adair:

In the hearing before the Interstate Commerce Commission Examiner in Docket 18364, Georgia Public Service Commission v. the Atlantic Coast Line Railroad Company, at Jacksonville, on June 10-12, 1931, I think I did say: "During the years 1929 and 1930 the movement of logs on our system, including the long length logs in Florida, consisted of 3,450,765,300 pounds of which the interstate movement consisted of 456,134,800 pounds, leaving the intrastate movement of 2,994,630,500 pounds." It is true that during those two years, which is approximately the restitution

period, that our intrastate business on logs on our system as a whole constituted about 87 per cent of our total log business, and our interstate movement of logs only about 13 per cent of our total movement of logs over our system during those two years. But in Florida in 1929 and 1930 [fol. 2404] our intrastate movement of logs was far greater than any other intrastate movement, so what I said previously is absolutely correct, and while in Florida the volume of movement intrastate is large, and limited if it exists at all interstate, the other States that we serve, the reverse is true. During that time we had only 456,134,800 pounds of interstate business against 2,994,630,500 pounds of intrastate log business on account of the volume of the Florida intrastate traffic.

(Witness excused.)

H. J. Flack, sworn by Claimants, testified as follows:

Direct examination.

By Mr. Adair:

My name is H. J. Flack, and I have been operating a traffic bureau in Jacksonville, Florida for the past eleven years. Prior to that I was with the Armour Company in their traffic bureau, together with the Fruit Growers Express, for sixteen years. The business I do in Jacksonville is entirely traffic work, making rates and adjustments.

During June and July, 1931, I undertook to make an investigation on behalf of the intervenors in the State of Florida, the intervenors being the Wilson Cypress Company, the Wilson Lumber Company, and the Cummer Cypress Company, to ascertain the number of cars of logs and the species of these logs, and the amount of revenue collected by the Atlantic Coast Line Railroad during two periods, namely, February 8, 1929, to January 31, 1930, and February 1, 1930, to January 31, 1931. I divided the restitution period, which consisted of two years, into two periods of one year each. It is correct that with that in mind I made an analysis of the Ingram Exhibit #1 and Perrin Exhibit #61, and determined the species of each kind of log that moved in each respective movement. I [fol. 2405] have prepared exhibits on that, and here they are.

(The first sheet produced by the witness was marked claimants' Exhibit 104-A, the second sheet 104-A-1, the third sheet 104-A-2, the fourth sheet 104-A-3, the fifth sheet 104-A-4, the sixth sheet 104-A-5, the seventh sheet 104-A-6, the eighth sheet 104-A-7, the ninth sheet 104-A-8, the tenth sheet 104-A-9, the eleventh sheet 104-A-10, the twelfth sheet 104-A-11.)

The first sheet is a recapitulation of intrastate log movement in Florida during periods February 8, 1929, to January 31, 1930, and February 1, 1930, to January 31, 1931, respectively, exclusive of train load movements from Hines to Palatka. (Tes., p. 1155B.) As I recall there are two exceptions to all of the points of origin and destination shown on Perrin's Exhibit 61 and Ingram's Exhibit #1. The exceptions were Tampa, Florida, and Clain, Florida; three cars moved to Tampa, and two cars to Clain, and just one car to Childs, Florida; those three are omitted on account of the smallness of the movement. My exhibit shows that 7,965 cars were moved during the first period. The revenue collected by the Atlantic Coast Line Railroad was $201,891.20. During the second period there was a total of 3,204 cars of logs with revenue collected of $70,274.75. I have prepared an analysis of this recapitulation sheet in detail. We have investigated the movement to Groveland during the first period as heretofore stated, and to that point there were no cars moving during this first period. During the restitution period the J. Roy Arnold Lumber Company was at Groveland; this was a cypress mill. There were no other mills at Groveland. During the second period my investigation shows that 191 cars moved there, all cy- [fol. 2406] press logs. The third column is headed "Miles"; that represents the distance from the loading point of these logs to Groveland, Florida; the point of origin, I mean. The next point that I investigated was Loughman, Florida. The Everglade Cypress Company was located there during this restitution period; there were no other mills there. That was exclusively a cypress mill. According to the record there were no cars received at Loughman during the first period; my investigation shows that 217 cars of cypress logs moved to Loughman during the second period, with revenue collected of $5,673.53.

The next point of destination is Slater, Florida, a small mill there operated by the Dowling Lumber Company, cut-

ting pine logs. During the first period there were no logs received there, but 71 cars moved there in the second period, with revenue of $987.96.

We have Bond's Mill and Glenwood as the next item during the restitution period. The mill was operated by the Putnam Lumber Company. There was no other mill at that point. Bond's Mill and Glenwood are relatively close together, and the mill is located in the timber; and consequently, for this purpose, Bond's Mill and Glenwood meant logs for the Putnam Lumber Company. The Putnam Lumber Company received 95 cars during the first period, all cypress, and the revenue collected was $2,155.32. With respect to the second period there was a total of 121 cars received mixed, cypress and some hard wood, with a total collection of $2,630.20.

I have Jacksonville in the next exhibit. The mills at Jacksonville during the restitution period were The American Hardwood Company, the Thompson-Catz Lumber Company, the Wilson-Otwell Company, F. S. Buffum, Inc., Hazzard Bros., Gress Manufacturing Company, and the Hessler Hardwood Company. I developed in the course of my investigation that during the first period in Jackson- [fol. 2407] ville, for the several mills mentioned, there was a total of 961 cars of logs received. Practically all of the cars were hardwood, and the revenue collected was $23,- 772.77. With respect to the second period, I find 266 cars to Jacksonville, with total revenue collected of $7,646.15. Practically all of these cars were hardwood. There was no pine mill operating in Jacksonville during this restitution period. During the first period the American Hardwood Company received 566 cars, but none during the second period. They failed and went out of business during the first period. The Thompson-Catz Company received during the first period 291 cars and 118 cars in the second period. The Wilson-Ottwell Company received 21 cars during the first period and 3 cars in the second period. F. S. Buffum, Inc., received none during the first period, and 99 cars in the second period. Buffum cuts cypress and some hardwood. Hazzard Bros. received three cars during the first period, and 22 cars during the second period. The Gress Mfg. Company received 24 cars in the second period, and the Hessler Hardwood Company received 80 cars dur-

ing the first period. The Cross Manufacturing Company and F. S. Bullum, Inc., were both on the water.

The Wilson Lumber Company has a mill at Perry, and the Burton-Swartz Company has a mill near there. (Tes., p. 1160 R.). According to my information that latter company did not get any logs by common carriers during the restitution period. According to my understanding they have a trackage agreement with Atlantic Coast Line Railroad, and also have their own tram road. They cut cypress, but no pine. Those logs moved to Wilson Lumber Company at Perry. During the first period they received 2,107 cars, with a total revenue of $55,438.58. During the second [fol. 2408] period the total number of cars was 1,078, with revenue collected of $21,766.76. Those were all hardwood logs.

The mill at Cross City is operated by the Putnam Lumber Company; there is no other mill there. They have a pine and cypress mill. During the first period this mill received from Hines, Florida, 325 cars of pine logs, with total revenue collected of $6,122.36; during the second period they received 934 cars with revenue collected of $19,778.72. The shipment of 393 cars of cypress from Carbur to Cross City during the second period was logs that were sent to the Putnam Lumber Company by the Brooks Scanlon Corporation on account of their not yet having established their cypress plant at Foley. They have it established now. The 228 cars of pine from Hines to Cross City in this period were logs forwarded by the Wilson Cypress Company. My understanding is that the Wilson Cypress Company cut nothing but cypress, and, therefore, sent the pine logs to the Putnam Lumber Company for disposition. According to my investigation, logs moving to Eastport during the first period numbered 224 cars, all pine logs, with revenue collected of $10,403.43. There were none during the second period. The only mill at Eastport during the restitution period was the Brooks-Scanlon Corporation.

The next point is Gainesville. My investigations show that during the first period Brown Bros. operated a mill at Gainesville, cutting hardwood, and received 72 cars of logs, with revenue collected of $2,100.83. There was no other mill at Gainesville during the restitution period. Brown Bros. failed and went out of business during the first period.

Live Oak shows a movement of 39 cars during the first [fol. 2409] period to the Hair Hardwood Company, which logs were all hardwood, and the revenue collected was $854.34. There were no other mills at Live Oak during the restitution period. The Hair Hardwood Company failed and went out of business during the first period.

The Long Leaf Lumber Company was at York. They had a pine mill. There were 599 cars there with revenue collected of $8,778.70 during the first period and none during the second. They cut out at York and moved their plant down to Indian Town in South Florida, in the timber. There were no other mills during the restitution period at York.

My next item is Buffalo Bluff, and there was a mill operated there by the J. W. Jones Lumber Company. There was no other mill there. This mill received 93 cars of hardwood logs during the first period, with revenue collected of $1,711.88. During the second period one car was received with revenue of $15.57. I might add that the Jones Lumber Company also received some logs there by water, being located on the St. Johns River.

At Lacoochee the mill was operated by the Cummer Cypress Company. There was no other mill there then. During the first period they received 3,004 cars, with revenue collected of $77,082.64. That was about 2,500 cars of cypress and 250 cars each of pine and hardwood. The Cummer Cypress Company has a crate mill and also a cypress mill at Lacoochee. To be exact, there were 224 cars of pine and 334 cars of hardwood moving there during the first period, but no pine nor hardwood during the second year. During the second period there were 225 cars, all cypress, with revenue collected of $3,943.34.

[fol. 2410] The mill of the Cummer Cypress Company, a crate mill, was at Otter Creek during this period. They got 515 cars of gum hardwood, with revenue collected of $13,034.45 during the first period. During the second period they received 6 cars of hardwood with revenue collected of $151.92.

My investigation developed that the Townsend Lumber Company operated a small mill at Baldwin, Florida, during the first period, and received 9 cars of hardwood with revenue collected of $133.44, but none during the second period. This party failed and went out of business.

My investigation as to the log movement to Palatka is exclusive of the train load movement from Hines to Palatka during the period beginning February 8, 1929, but includes all single car load movements from every source, the miscellaneous car movement. During the first period there were 12 cars received, all cypress, with revenue collected of $302.46, and during the second period a total of 94 cars, all cypress logs, with revenue collected of $2,301.62. (Tes., p. 1165B.)

I have an exhibit here which shows an analysis of the intrastate log movement in Florida, exclusive of the train load movement from Hines to Palatka during the first period, namely, from February 8, 1929, to January 31, 1930, inclusive, showing the number of cars of pine, cypress and hardwood logs, respectively moving, and the amount of revenue derived therefrom, as going to the several destinations. That is my Exhibit 104-A-10. During the first period there were 1282 cars of pine, with revenue of $31,052.33; there were 2890 cars of cypress with a revenue of $73,866.90, and there was a total of 3,793 cars of hardwood, with revenue of $96,971.97. Exhibit 104-A-11 is also an [fol. 2411] analysis of the intrastate log movement, exclusive of train load movement from Hines to Palatka, during the period from February 1, 1930, to January 31, 1931, inclusive, showing the number of cars of pine, cypress and hardwood logs, respectively, moving and the amount of revenue derived therefrom. For pine logs it shows 296 cars, with revenue of $5,228.84; cypress logs, 1,566 cars, with revenue of $36,387.01; hardwood logs, 1,342 cars, with total revenue collected of $28,658.90.

The J. Ray Arnold Lumber Company was at Groveland. The mill owns its own tract of timber and has a tram road which is adjacent to their mill at Groveland. The same is also true as to Loughman; they got their logs from timber and from common carriers. During the first period there were none received. The reason they got some logs during the second period and none during the first is that they cut out around their mill during the first period. There was no mill at Palatka other than the Wilson Cypress Company during the restitution period.

I think you are entitled to know how I arrived at these results. In the first place, this is primarily an analysis of Ingram's Exhibit #1. I proceeded to Groveland and in-

terviewed Mr. J. B. Arnold, the Vice-President of the J. Ray Arnold Lumber Company, who is manager of the mill at Groveland, and I examined the original Atlantic Coast Line Railroad freight bills. There were a few of the freight bills that were on file at Jacksonville in the office of the Southern Cypress Association, and I also examined those, and made up my figures from the two sources, having seen the freight bills at Groveland, and those at Jacksonville in the possession of the Southern Cypress Association. The Arnold Lumber Company has filed a claim in the restitution proceedings. I have checked my tables with that restitution claim as to the movement of logs dur- [fol. 2412] ing the particular period and as to the number of cars, and there is very little difference. At Loughman I interviewed Mr. Lee, the manager of the Everglade Cypress Company.

(Objection by Mr. Alston that the testimony of the witness is hearsay.)

As I recall, there was a difference of 61 cars between my total number of cars and the total number of cars shown by Mr. Perrin upon his Exhibit 61, which was Mr. Ingram's Exhibit #1.

"Court: It might be proper for me to say here that in view of the situation, the very serious doubt about testimony where somebody else has told him something being admissible, I further doubt whether any figures or statements, or facts testified to by the witness based on what somebody else told him, would be admissible. I am not ruling on it, but giving you my idea." (Tes., p. 1170B.)

(Witness continuing:)

Mr. Lee showed me their log car receiving book which is a book of original entry. I prevailed upon the manager of the Everglade Cypress Company to give me the figures in writing, after I personally examined the log book.

(Objection by Mr. Alston that the testimony is clearly secondary.)

"Court: There might be a distinction made here as to his testimony about what somebody told him, somebody that he got the figures and facts from, and a record that is not

accessible to this Court, if that record was itself admissible here. I am not ruling on it, simply making a suggestion."

(Witness continuing:)

I have checked this record at Groveland with the claims on file in this Court. I find, according to the claims filed, the shipments involved covering movement during the last period, that there were 202 cars. The claim filed here covers the period during the entire time of the high rate, which, I believe, ended sometime in April, 1931. Yes, Mr. Perrin's Exhibit 61, and Mr. Ingram's Exhibit 1, ended with January 31, 1931. The claim figures of the Everglade Cypress Company at Loughman showed a total of 291 cars as against my figures of 217 cars. I assume that is true [fol. 2413] with respect to Loughman in that they included cars moving up through the entire period, up to some time in April, 1931. Slater, Florida, is a point south of Fort Myers, Florida, and I accepted Mr. Perrin's figures on that.

I personally proceeded to Cross City and found a record of the Putnam Lumber Company, which owns and operates the mills at Bond's Mill and Glenwood, and I personally investigated the different parts of the files, showing the identical cars moving to these two destinations. I checked them out against my figures and against the claims filed here. According to claims filed, there are shown to be 89 cars against 95 cars for the first period. In the second period there was a total of 116 cars against 121 cars.

As previously stated there were several mills receiving logs in Jacksonville. Six of those mills had placed their claim and original freight bills in the hands of Mr. G. L. Moore, who was representing them as Traffic Manager, and operating under the name of "The Jacksonville Lumber Dealers' Association." I examined the claims and the freight bills of each of these lumber concerns, with the exception of the American Hardwood Company. In the first instance I examined the statements of the claims, which is an abstract of the original paid freight bills. I didn't see the original freight bills themselves on the first investigation. The American Hardwood Company also prepared a statement showing an abstract of the logs moving during [fol. 2414] the different periods, the points of origin, and the various points of destination.

(Objection by Mr. Alston.)

I have checked those figures with the original claims on file in this restitution proceeding. According to my exhibit I show 961 cars moving into Jacksonville during the first year of the high rate. The claim shows a total of 1096 cars. During the second period I have indicated a total of 266 cars, while the total claim shows 246 cars. There is a discrepancy between Mr. Perrin and me in the Jacksonville movement; our variation is primarily in Jacksonville.

I personally went to Perry, and on my request, Mr. Rowland, secretary of the company, told me of his original claim record, or showed it to me. The claim record is an abstract of all freight bills covering shipments received by his company at Perry. I also examined the log car receiving book there. I found 2107 cars received during the first period at Perry, while the claims show 2112 cars. And during the second period, according to my investigation, I found 1078 cars, whereas I observe the claim account is for 1115 cars. (Tes., p. 11753.)

(Motion by Mr. Alston to exclude the evidence because it is hearsay and not based upon primary knowledge on the part of this witness.)

I proceeded to Cross City and interviewed Mr. Summitt, office manager of the Putnam Lumber Company. The original paid freight bills showed the movement of cars to Bond's Mill and Glenwood.

"Mr. Alston: May it be understood that my objection applies to all of this?"

"Court: Yes, to all of the testimony. At the conclusion of it, you can record any objection you wish, and if not, I will consider it as done."

(Witness continuing:)

In regard to the Cross City movement I also examined the original paid freight bills tendered me by Mr. Summitt, [fol. 2415] the secretary of the Putnam Lumber Company, and from that I got the data shown here. I checked the claim record and found that the statement made by the Putnam Lumber Company showed that 984 cars had moved during the second period, that is, up to April 10, 1931, when the Cummer scale was restored. This period was ended

on January 31, according to Ingram's exhibit, and shows 984 cars. In my original investigation I did not make a check of any movement from Hines to Cross City except the Wilson Cypress Company movement. In checking up this exhibit and Mr. Perrin's exhibit with respect to the movement from Hines to Cross City, I examined the claims of the Wilson Cypress Company. (Tes., p. 1180B.) According to the claims filed there were 814 cars shipped by the Wilson Cypress Company from Hines to Cross City, instead of 325. The figures 325 compared with the claim made by the Putnam Lumber Company. It is correct that there are substantially five cars more to which the Wilson Cypress Company had claim. In my analysis I didn't locate those in Perrin's Exhibit 61 or Ingram's Exhibit #1. Nor was it shown on my exhibit as originally prepared here. I wouldn't care to say definitely whether those cars were prepaid or not by the Wilson Cypress Company, although I understand the Wilson Cypress Company paid the freight charges.

(Objection by Mr. Alston.)

With respect to Eastport, I went to Foley, Florida, where the Brooks-Scanlon Corporation's mill is now located, its plant having been transported from Eastport, and I interviewed Mr. Share, who is vice-president. I did not examine any records. I was informed all the records were in Jacksonville in possession of attorneys, so I accepted the figures shown on Ingram's Exhibit #1. There is no claim filed on Eastport.

[fol. 2416] I went to Gainesville and endeavored to locate the plant of Brown Bros., who formerly operated there, but the mill had failed in 1929 and gone out of business. I was unable to locate Mr. Brown. I ascertained from another lumber man that Mr. Green, who was in charge of the Lumber Manufacturing Company, that there were no logs shipped to his plant, but all logs during this period of 1929, were received by Brown Bros. I got the number of 72 cars, and the amount of $2,100.83, by accepting the figures on Ingram's Exhibit #1.

On account of the Hair Hardwood Company being out of business since 1929, I did not go to Live Oak, but I ascertained from their Traffic Manager, Mr. Commare, of South Jacksonville, that he was filing claims for restitution,

and I verified the figures. I observed the records from the abstract of claim.

(Objection by Mr. Alston.)

I have checked the claim here with respect to the time and place for the period in which the claim was made and the number of cars. The claim return shows 40 cars involved, whereas my investigation involved 39 cars during the first period.

I personally went to York, Florida, and upon arrival there I found that the Long Leaf Lumber Company had discontinued its operations and had moved its mill to Indiantown, which is in South Florida, near Lake Okechobee. I developed that the Long Leaf Lumber Company had made this claim through their traffic man, Mr. H. O. Taylor, and from him I secured the information as to the number of cars moving during the first period. I checked that with the claim records and found that my figures and the claim records exactly agreed, a total of 509 cars.

Buffalo Bluff is a small point located about 5 miles from Palatka. Its mill is operated by the J. W. Jones Lumber Company. Mr. Jones lives, and has his office in Palatka. I examined his original paid freight bills, and also his log books. From these records I obtained the data. Ac-
[fol. 2417] cording to the claims filed it shows a total of 103 cars, while I only made a record of 93 cars. It is correct that the period for the claims is about two months longer than the period covered by Exhibit 61 and by Exhibit 1 of Perrin and Ingram. I found that one car moved during the second year which is included in the claims.

Relative to the Lacoochee item, through the first period I show 3004 cars, and I secured that data from the office of the Cummer Cypress Company, and that is in accordance with the claim. I secured the figure of 225 cars for the second period from the office of the Cummer Cypress Co. in Jacksonville. The claim figures indicate they have shown 269 cars, but that takes us to April, 1931.

I obtained the records relating to the Otter Creek movement from the Jacksonville office of the Cummer Cypress Company. I have not checked them with the original claim on file here insofar as the first period is concerned. In the second period there was a total of six cars according to the claim, and my record shows six cars.

I personally visited Baldwin, Florida, and found a party by the name of Townsend had been operating a mill at that point selling hardwood. However, this mill discontinued operations in 1929, and Mr. Townsend moved to Jacksonville. I accepted the figures on the Exhibit #1 as being correct. That compares with the claim on file.

I visited the office of the Wilson Cypress Company at Palatka, and examined the car log receiving book, and also copy of the restitution claim filed by that company against the Atlantic Coast Line Railroad. (Tes., p. 1185B.) During the first period I show a total of 12 cars moving, but this, of course, is exclusive of the train load movement, and the claim shows, taking that into consideration, 15 cars. The [fol. 2418] second period covers 99 cars, whereas I have only accounted for 94 cars.

There is a net difference between my investigation and Ingram's Exhibit #1 and Perrin's Exhibit #61 of 75 cars. My investigation covers the movement to the various points of destination shown on this Exhibit #1. I was unable to locate any record in some instances of cars of logs shown by Exhibit 61 to have moved from particular origins to listed destinations, and likewise found some cars from other origins to these destinations, and which are not shown on Exhibit #1. The difference between my exhibit and Exhibit #1 in cars to the destinations listed on my exhibit is this: that I was unable to locate any record of 163 cars shown on Exhibit #1 to have moved during the period covered by that exhibit. I did locate the records of 88 cars which moved to these destinations during that period which are not shown on Exhibit #1, so that the net difference between my exhibit and Exhibit #1 is 75 cars, out of a total of something over 11,000 cars.

(Statement headed "Recapitulation of Intrastate Log Movement in Florida, during periods February 8, 1929 to January 31, 1930, and February 1, 1930, to January 31, 1931, respectively, exclusive of Trainload movement from Hines to Palatka," was introduced as Claimants' Exhibit #104-A with the supporting data, the sheets being marked 104-A-1 to 104-A-11, inclusive.)

Cross-examination.

By Mr. Alston:

It is right that I testified in the Interstate Commerce Commission's proceeding twice in this cause, and my Ex-

hibits 104-A through 104-A-11 are reproductions of my exhibits 111 through 122, both inclusive, offered to the Interstate Commerce Commission's Examiner in his Docket #18364, in the hearing had in Washington in July, 1931. There has been some decline in railroad traffic during the [fol. 2419] second period which I have discussed. I wouldn't say that there was a greater decline in 1930 and 1931 than I have ever known in my life. There was a decline but it had not reached bottom; it wasn't an upswing. I wouldn't care to agree with you that it was a serious decline because, as I observed traffic conditions, there was a less movement, less tonnage handled by carriers, in subsequent years to 1931; it got worse, but it was showing a decline in 1931. The heavier decline was in 1932 and continued until the first months of 1933. I don't know whether a progressive decline began as far back as 1927. I do not have the figures on how much decline there was in the shipment of logs in Georgia during the period covered by my exhibits. I don't know how many lumber mills stopped in Georgia during that period; I have not investigated it. I assume that Georgia was no different from other States.

Redirect examination.

By Mr. Adair:

It is correct that these shipments which I have been testifying about involved the Atlantic Coast Line Railroad in Florida and nowhere else. In my investigation of this log traffic during the period of restitution for the two years ending January 31, 1930, I have not made an investigation with respect to the log traffic in any other State than Florida. I was only interested in the Florida movement and no other state.

(Witness excused.)

(Thereupon the claimants called upon the Atlantic Coast Line Railroad to produce for the record the amount of freight paid by the Putnam Lumber Company to the Atlantic Coast Line Railroad Company for transportation of logs in trainload quantity in Florida during the years 1926 and 1927 to their plants at Milldale and Ortega, near Jack- [fol. 2420] sonville, Florida. The defendant stated that such a record had not been prepared and that it would be a physical impossibility to produce it by the following morning.) (Tes., p. 1190B.)

(A certificate from the Interstate Commerce Commission from the annual reports of all of the Class-1 Railroads in the South, showing the volume of their log tonnage separately for the years 1929 and 1930 was offered as defendant's Exhibit #73-B. Objection by Mr. Adair that there is nothing to show that the circumstances there involved have any bearing upon, relation to, or similarity to the circumstances here involved; also that the matters sought to be proved are incompetent in this proceeding, and likewise immaterial and irrelevant to the issues here involved.) (Tes., p. 1195B.)

"Mr. Lamb: Your Honor, I now present the following statement. I will first read it in the record, and then make an explanation of it.

"Out-of-Pocket" Expenses and Their Application

First, let me explain the term "out of pocket" expenses and why they are used.

There are certain expenses which can be directly assigned to any train or number of trains from our time tickets and payrolls and records of coal issued to each locomotive which are currently kept in our regular records. These expenses are those arising from wages of Engineers, Firemen and Trainmen, and fuel issued to the locomotive, and also a few other accounts covering certain minor supplies for the locomotive.

These expenses would not be incurred if the train did not operate, so the term "out of pocket" expenses has been applied to these accounts. They might be called assignable expenses but the general custom is to call them "out of pocket."

[fol. 2421] The next question that is raised is "Why do you have to use the system ratio of these "out of pocket" expenses to total haulage expenses or total freight expenses to obtain the total haulage or total expenses of log trains?"

The answer is we do not keep all of our operating expenses separately for each division or branch of the system for the accounts other than "out of pocket" accounts. Therefore, the only way to find the other expenses, not represented by the out of pocket expenses, is to take the charges for these same accounts for the system and find their relation to the total haulage expenses or to the total of all

freight expenses, as the calculations may require, and on the assumption that the ratio for the system will fairly represent the relation on other particular parts of the system.

Now, in the case of any "out of pocket" expenses incurred in Florida, this has the effect of really understating the Florida expenses, and in the case of these log trains, of understating the cost of handling logs. This, for the reason, as I have so frequently explained, that the unit costs in Florida are greatly in excess of the unit costs on the balance of the system excluding Florida.

I will now try to explain as clearly as possible just how the application of the use of the system ratio of "out of pocket" expenses to total haulage expenses is obtained and applied.

The use of this ratio simply adds to the "out of pocket" expenses definitely ascertained from the pay rolls, vouchers and time tickets, a proper proportion of the accounts other than the "out of pocket" accounts.

[fol. 2422] It does not mean that the dollars chargeable to each of the accounts making up the "out of pocket" expenses are increased, but on the contrary these definitely determined accounts remain absolutely as shown and are not increased one cent, but, as stated above, to them are added a proportionate part of each of the other accounts.

Let me illustrate by a simple calculation using purely assumed figures as representing all haulage expenses for the system, and also "out of pocket" expenses of both the log trains and system. Assume the following accounts, 1 to 17 inclusive, first column, represent all of the haulage expenses of the system:

	System "out of pocket" expenses	Log Train "out of pocket" expenses
1. Engineers	$7,000	$700
2. Firemen	5,000	500
3. Fuel for locomotives	10,000	1000
4. Water for locomotives	2,000	200
5. Lubricants for locomotives	500	50
6. Train Supplies	500	50
7. Trainmen	10,000	1000
Total "out of pocket" expenses	$35,000	$3500

	System "out of pocket "expenses	Log Train "out of pocket" expenses
8. Superintendence	$2,000	$200
9. Track laying and surfacing	6,000	600
10. Ties	12,000	1200
11. Rails	80,000	8000
12. Bridges	5,000	500
13. Repairs to locomotives	165,000	16,500
14. Transportation-Supt.	20,000	2,000
15. Telegraph Operators	5,000	500
16. Traffic Expenses	10,000	1,000
17. General expenses	10,000	1,000
Total added accounts	$315,000	$31,500
Total haulage expenses	$350,000	$35,000

Now let us consider only the first seven items, both for log trains and for system, as both columns represent the [fol. 2423] same "out of pocket" expenses for the system and for log trains respectively. I just want to note that for the system the total of the "out of pocket" expense accounts 1 to 7 inclusive is $35,000.

Now, for the moment, completely disregard the figures under Log Train, but look at items 8 to 17 inclusive for the System, aggregating $315,000. These latter named accounts embrace all haulage expenses of the System not listed within the out of pocket group of accounts, and when added to the $35,000 System "out of pocket" expenses, bring the total System haulage expenses up to $350,000. Therefore, the System ratio of "out of pocket" expenses to total haulage expenses would be obtained by dividing $350,000 into "out of pocket" expenses, $35,000, and we have the ratio of 10 per cent.

Therefore, if our premise is correct, when we take the log trains "out of pocket" expenses of $3,500, and divide by the System ratio of 10 per cent we get $350, representing one per cent, and multiplying $350 by 100 to get 100 per cent, we have as total haulage expense of the log trains $35,000.

Now, to prove that we did not expand or inflate any one of the first seven accounts of the Log Trains (or "out of pocket" expenses) let us look at the figures under "Log Trains" for accounts listed as 8 to 17 inclusive.

We have developed that the out of pocket expenses are 10 per cent of the total haulage expenses and by raising the definitely ascertained "out of pocket" expenses of the Log trains $3,500 by the use of this ratio produced $35,000 as the total haulage expense of the Log Trains. If our contention is correct then we can prove it by taking 10 per cent of each account of the System other than "out of pocket" accounts and when added to the $3,500 "out of pocket" expenses, should produce a total of $35,000.

[fol. 2424] Now, look at the tabulations under "Log Trains" for those other accounts, and we find they aggregate $31,500, being 10 per cent of each of the System figures for each account, and when we add the originally ascertained "out of pocket" expenses of the Log Train, $3,500, we get a total of $35,000, proving our contention and verifying the accuracy of our calculation obtained by dividing $3,500 by 10 per cent and multiplying by 100 to get the total haulage expenses attributable to the Log Trains.

Note particularly that the figures on lines 1 to 7 inclusive remain as originally developed from time tickets and pay rolls and are not inflated one cent.

I will now try to make clear that it is proper to add 5 mills per ton mile for coal used by the log trains. First, let me say we are here attempting to develop the approximate cost of a particular service and such costs should properly include all expenses incurred in performing that service.

One of the major operating costs of a steam railroad is the cost of fuel. The larger part of the fuel cost is the cost of transportation, the price of coal at the mines being a minor factor. The question of distance to be hauled is therefore an important element in determining the total cost of fuel. It naturally follows that the more remote railroad operations are from the mouth of the mine, the more costly the operations.

There are no mines located on the Atlantic Coast Line Railroad and the operations in the State of Florida are further removed from the mines than are the operations of any other part of the system. In obtaining coal for the Florida operations it is therefore necessary not only to pay other carriers the commercial rate on this coal to connec-[fol. 2425] tions with our line, but it is also necessary that this coal be handled over the lines of this company through

other States, namely, Virginia, North Carolina, South Carolina, Georgia and Alabama, according to the coal field in which purchased. This incurs System operating costs in states outside of Florida fof the benefit of Florida, which are not offset in any manner by the movement of the traffic through Florida for the benefit of these other states. In order, therefore, to establish a (Tes., p. 1200B) true cost of any specific operation in the State of Florida, it is necessary to give effect to this important element of haulage cost performed in other States for the benefit of Florida traffic.

It is my opinion that in stating the cost of hauling any particular commodity in the State of Florida the fuel cost can only be correctly stated as follows:

1. Cost paid mines;
2. Commercial freight rate of junction with Atlantic Coast Line Railroad;
3. Haulage cost of now less than 5 mills per ton mile from junction point to point of issue;
4. Cost of handling at point of issue.

Let me use a simple illustration:

Let us assume that the system operated only ten trains in all; that nine of these trains carried revenue tonnage, and one train carried only coal for the operation of the engines hauling the nine revenue trains; also let us further assume that there were nine trains of logs.

The System "out of pocket" expenses include the cost of handling the one train of coal, but the nine log trains include no corresponding expenses for the one train of coal necessary for use of locomotives handling the log trains.

Unless I add the 5 mills per ton mile to the cost of coal for the log trains, I would in effect be comparing ten trains for [fol. 2426] the system with nine trains of logs, for I would not have included the one train carrying coal for the log traffic, and the figures would not be comparable. In other words, assuming that 5 mills per ton mile is the average cost per ton mile for the system for handling Company coal or whatever the cost be to the System, then the costs are in the System "out of pocket" expenses, but no comparable figures or costs are in the Log Trains "out of pocket" expenses until I add them.

If we did not add the five mills, which are properly added, we would first be understating the cost of the log traffic, and

second would not be comparing like with like and the ratio of system "out of pocket" expenses to total haulage expenses would be too high a figure, thereby further understating the cost of the haulage expenses for the log trains. I can best illustrate this by a simple calculation.

Now, to explain that, your Honor, I will file as Defendant's Exhibit 74-B a statement of two sheets, which is headed "Raising or expanding 'out of pocket' expenses so as to add all other accounts not embraced within the group of accounts designed 'out of pocket'."

Now, the first line shows the total operating expenses, freight for the Atlantic Coast Line System for the year 1930 were $36,308,812.74. The next will show the total system "out of pocket" expenses at $6,920,638.75. The third line is the ratio system "out of pocket" expenses to total freight expenses, which is obtained by dividing the $35,308,-812.74 into the $6,920,638.75, and you will get 19.0606 per cent. Now, that is the ratio that has been used on my exhibit in this case. I want to make it clear to you the reason why you must add the five mills per ton mile. Now, on the system in 1930, line four shows the tons of coal consumed [fol. 2427] on the system as 1,289,629; line five shows the average haul of company material in miles as 160. If we multiply the tons by the miles we will get in line six the approximate ton miles of coal as 206,340,640. Now, lets divide out five mills per ton into the ton miles shown in line six and we would have in line 7, $1,031,703.20. Now, on line 8 I have brought down from line 2 the "out of pocket" expenses of $6,920,638.75. Let's deduct the cost of hauling the coal included in the system "out of pocket" expenses of $1,031,703.20, and we have on line 10 the "out of pocket" expenses for the system, after eliminating the cost of handling coal as $5,888,935.55. Now, on line 11 we revise the ratio of system out of pocket expenses to total freight expenses, after eliminating the five mills per ton miles from system "out of pocket" expenses.

Court: By eliminating that you get a new percentage?

A. Yes, sir; I get a ratio of 16.2191 per cent instead of 19.0606 per cent. Now, on line 12 I have taken the cost per gross ton mile from Saunders Exhibit 77-A, out of pocket

expenses of $1,682.41 divided by gross ton miles 1.763654, Homosassa to Lacoochee, and we get as the cost .095394 cents. Now, if you want to raise that to include the total haulage expenses in learning the cost of the coal we would divide it by 19.0606 and that line 13 shows the effect of dividing by that ratio and multiplying by 100, and I get .5004 cents per ton mile. Now, let's simply subtract from the 19.0606 per cent the 16.2191 per cent, which is the ratio if you exclude the five mills.

The effect of that subtraction is when you divide the 16.2191 into the .095394 cents, the cost per gross ton mile, [fol. 2428] Homosassa to Lacoochee, you raise it to .5881 cents as shown on line 14, which would increase the cost from .5004 cents to .5881 cents or 17.52 per cent. Now, adopting for the moment, and not admitting the validity of the objection of complainants, but simply adopting for the purpose of illustration: Take the extreme calculation, which materially understates the facts, and let us throw away entirely the $1,031,703.20 included in the out of pocket expenses of the system and in "total freight expenses" for hauling the coal on the system, as follows:

The total operating expenses freight for system line 1 were $36,308,812.74, and deduct the cost of hauling coal at five mills per ton mile, as shown by line 7, $1,031,703.20, and it would leave operating expenses of $35,277,109.54. Now, the out-of-pocket expenses of the system, after eliminating the cost of handling coal, as shown by line 10, was $5,888,935.55, and the ratio of this figure to the operating expenses shown on line 16, after eliminating the five mills per ton mile, would be 15.6933 per cent., instead of 19.0606 per cent., which we originally developed. Now, if we again raise the cost per gross ton mile, line 19, Homosassa to Lacoochee .095394 cents by dividing 16.6933 per cent. and multiply by 100, we get .5715 cents, which would increase the cost from .5004 cents on line 13 to .5715 cents on line 19, or 14.21 per cent.

Now that shows what would be the effect if we were eliminating, and if we had had the above figures for the cost of coal handled in the system we would have proceeded in this manner. I developed this after this discussion in an effort to try to make clear the effect of it. If I had originally worked out this calculation and developed for the system out-of-pocket expenses this $1,031,703.20 for the

cost of handling coal, I would have had the operating expenses for the system absolutely comparable to the cost [fol. 2429] of operating expenses from Hines to Palatka without adding the five mills per ton mile. Then it would have been entirely proper later to have added the five mills per ton mile, because the Hines to Palatka movement included that expense over the system.

Now, let me file another exhibit here as defendant's Exhibit #75-B, showing the effect of excluding from both the system out-of-pocket expenses and the Hines-to-Palatka (Tes., p. 1205-B) movement, November, 1930, the five mills per ton-mile for handling coal, as shown on Exhibits 23 and 133.

In the first line I have taken the out-of-pocket expenses of the log trains, Hines to Palatka, for the month of November, 1930, as shown on Exhibit 23, as $2,398.55, which contains the five mills per ton mile added to the cost of coal down to the Florida State line. Line 2 deducts this five mills per ton mile for hauling coal to the Florida State line, amounting to $282.17, which leaves on line 3 the out-of-pocket expenses, excluding the cost of handling coal at 5 mills per ton mile, as $2,116.38. Now, raising or expanding item 1 (before deducting freight on coal at 5 mills) to include other accounts or expenses not included in the group of out-of-pocket expenses, by dividing by the ratio to total operating expenses of the system out-of-pocket accounts to total operating expenses, leaving in the system out-of-pocket expenses the cost of handling Company fuel by using the ratio of 19.0606 per cent. and multiplying by 100, I raise it to $12,583.81. Now, to be absolutely comparable with the system I have deducted this $282.17, leaving the out-of-pocket expenses for the log train as $2,116.38, and I have on the previous exhibit deducted the cost of coal, $1,031,703.20, and show there that the ratio for the out-of-pocket expenses for the system, after eliminating the cost of coal is $5,888,935.55. Therefore, that figure is compar- [fol. 2430] able with the $2,116.38, and divide that by 16.2191% and multiply by 100 I get $13,048.66. In other words, I get more than the charge for the Hines to Palatka movement by using the system ratio and including the cost of $282.17 in my out-of-pocket expenses. In other words, I increase it by 2.69%. That is explained by the fact that when you take the out-of-pocket expenses, or rather take

out the cost of coal from the out-of-pocket expenses for the system and find your ratio to the total expenses, you get a lower ratio. That is, five million dollars is a lower ratio to thirty-six million than is six million nine hundred thousand to thirty-six million, reducing it from 19 to 16.

Now, on the seventh line in this exhibit I have taken $2,116.38, out-of-pocket expenses from Hines to Palatka, shown on line 3, which excludes the 5 mills per ton mile, and I have raised that by dividing by the ratio 16.6933%, which is the extreme low ratio shown on line 18 of Exhibit 74-B, and multiply by 100 we get $12,678.02. Now, I am adding back $282.17, the cost of handling the coal from the mines to the Florida State line for the Hines to Palatka log trains, and I produce a cost of $12,960.19, which is 3% greater than is used when you use the system original ratio, including the coal in the system out-of-pocket expenses. To me that clearly demonstrates this proposition, to add the cost of the coal to the out-of-pocket expenses, Hines to Palatka, because that expense is incurred for the benefit of the log trains by the balance of the system, but not by the Hines to Palatka movement. They are not in the Hines to Palatka out-of-pocket expenses until I add them in there.

In item 2 of the last exhibit I have "Deduct amount included at 5 mills per ton mile for hauling coal to Florida State line"; that total is included in the $2,398.55, which is the out-of-pocket expenses, Hines to Palatka.

[fol. 2431] By Mr. Alston:

The reason for developing in line 2, Exhibit 75-B the figures $282.17 is to make the figure comparable with the system out-of-pocket expenses after eliminating the cost of handling the coal for the system. It is correct that $282.17 is 5 mills per ton mile which I have added in my Exhibit 23 for the purpose of getting the cost of that coal that was used on the Hines to Palatka movement. In order to show what would be the effect if you left off that 5 mills I have deducted that $282.17 in this line 2. It is correct that that leaves line 3 "Out-of-pocket expenses excluding cost of handling coal, $2,116.38." Line 3, which is expressed in the figures $2,116.38, is the cost of the Hines to Palatka movement, November, 1930, after deducting the 5 mills per ton mile to the Florida line. I then proceeded as though I had yielded to the argument that 5 mills to the Florida line on

the coal should not have been put into the cost. And then when I had proceeded on that basis I get in line 4 the figure $12,583.81, as the cost of handling that train for that month. Had I raised the figures in item 1 by the original ratio, 19.0606%, now on line 5, I then throw away these 5 mills per ton mile represented by the $282.17, representing the 5 mills, and I then divide it by the ratio 16.2191, which is the system ratio, which likewise eliminates the same 5 mills per ton mile, then you are comparing like with like. In item 4 on this Exhibit 75-B, where I say "Raising or Expanding Item 1," it means that I am adding to the out-of-pocket expenses shown in line 1 the other expenses not included in the out-of-pocket expenses embraced in the system total expenses. I used the ratio 19.0606 for that was [fol. 2432] the original ratio that has been used throughout in this case, by me. It was obtained by taking the out-of-pocket expenses and dividing it by the total expenses, which are shown on lines 1, 2, and 3 of the previous exhibit.

Now in item 5, if you refer back to Exhibit 74-B you will find on line 11 the Revised Ratio System out-of-pocket expenses to total freight expenses, after eliminated the 5 mills per ton mile from system out-of-pocket expenses (line 10 divided by line 11). Now that means the figure comparable with the figures on line 3 of the Exhibit 75-B. (Tes., p. 1210-B.) And dividing the figures on line 3, $2,116,38, by 16.2191%, and multiply by 100 we get $13,048.66, as compared with $12,583.81, which used the ratio of 19.0606%. That results in an increase of $464.85. That $13,048.66 represents the raising of the $2,116.38 to include the total freight expenses by dividing by 16.2191, and that does not include the cost of $282.17 of the 5 mills per ton mile for handling the coal. That $13,048.66 means by using the ratio; that is the cost of the train less $282.17, where I added the 5 mills per ton mile for hauling the coal to the Florida line for the log train movement, Hines to Palatka, for the month of November, 1930. The $12,583.81 in line 4 means the total expenses of the log train, Hines to Palatka, by raising the figures opposite line 1, $2,398.55, by dividing by 19.0606 and multiplying by 100. The purpose of "raising" or "expanding" is to add to the originally known out-of-pocket expenses the other accounts which are not included and properly part of the other accounts which are not included in the out-of-pocket expenses for that log train. The reason for ascertaining out-of-pocket expenses for a

given movement, such as from Hines to Palatka, is that the out-of-pocket expenses are the only expenses that we can [fol. 2433] definitely assign to the log train, and then having ascertained those we can then compare them and find the relation of the same units for the system. The two accounts for the system or division are ascertained and the out-of-pocket expenses for the system are ascertained; those two are definitely ascertainable. You get the out-of-pocket expenses for the system and then you get the ratio of the out-of-pocket expenses for the system to the total system expenses. You do not get the ratio between the out-of-pocket expenses for the smaller division with the out-of-pocket expenses for the system; there is no relation between those two, and no comparison is made. The idea is this: We can definitely determine the out-of-pocket expenses for both the log train and the system, but we cannot determine for the log train the accounts other than the out-of-pocket expenses. Therefore, we find the out-of-pocket expenses for the system and develop that relation or ratio to the total freight expenses for the system, and then apply that ratio to the log train out-of-pocket expenses and add those other accounts to the log train expenses. Yes, I testified before that that method of ascertaining those expenses, other than out-of-pocket expenses, is well established in accounting practices. If you left off the 5 mills per ton mile for the fuel for both the system and for this movement or division, you would increase the cost of the Hines to Palatka movement. I think it is entirely proper to add the 5 mills per ton mile to the cost of coal for the reasons I have so frequently stated, that you have to haul it through all the other States of the system to get it to the Florida State line before you can use it on the log trains. As to Georgia I would have to do the same thing; if our line received it in Georgia, I would have to add to that the cost of the fuel down to the Georgia State line.

[fol. 2434] "Court: Would you add to the Georgia State line or to the junction with that road that delivered it to the Atlantic Coast Line?"

"A. If you developed a cost for the State—suppose we developed a cost for operating in the State of Georgia, then it would go to the State line because the expenses within the State of Georgia would be charged to the State of Georgia."

If you leave off the 5 mills per ton mile as to the Florida movement you must absolutely leave it off the system movement, or otherwise your figures are not comparable. If you did not do that you would put an element in one side of the equation that you have left out of the other side of the equation. In this, the system has it in, and in the log train it is not there until I add it. Yes, I would be willing in the ascertainment of the account to leave off the 5 mills on the Florida end if it were left off the system end. That would be a disadvantage to the Florida movement. It would increase the Florida costs; that is clearly demonstrated by my Exhibits 74-B and 75-B. Considering this statement, this whole situation, and from my accounting experience it is my opinion that the method used by me is absolutely correct.

I think it should be clearly understood that in dealing with Item 7 on Exhibit 74-B, which is "Cost for hauling based on 5 mills per ton mile, $1,031,703.20," that the last mentioned figures are approximate figures, used for the purpose of carrying out the illustration. As you will note from the last page of my memorandum, I stated: "I can best illustrate this by a simple calculation." Now, the purpose there was to illustrate a principle and not necessarily to show the absolute cost. You can take the $1,031,703.20 and cut it in half and the same principle applies. In other words, to whatever extent you reduce the $6,920,638.75 you will likewise reduce the relation of out-of-pocket expenses [fol. 2435] to the total expenses. That was the purpose of that. If you were to deduct from your $6,920,638.75 the figure $500,000, it would have left in the out-of-pocket expenses $6,420,638.00, which would be 17.683% of the total expenses. Now, if you will take the $2,398.55, out-of-pocket expenses, Hines to Palatka, and divide it by 17.683% and multiply by 100 we would produce $13,564.16, as compared with $12,583.81, obtained by using the ratio of 19.0606%.

By the Court:

I have as out-of-pocket expenses for November in hauling from Hines to Palatka $2,398.55, and in that is $1,138.46 for coal. And I have here $282.17, developed at 5 mills per ton mile.

"Q. Isn't that a small amount for the transportation charge of the $1,138.46? In other words, I thought the

transportation charge was the chief element in the cost of coal?"

"A. It is. As I explained yesterday, the coal comes from the mines, and when destined or for use in Florida, it has to make the extreme haul over the balance of the system. Now, I didn't charge the coal in that $1,138.46, or rather, originally it was charged out at the average system cost, without including any of the cost where it was issued, and we will say at Palatka, for instance, or at Hines, and it did include the transportation cost paid to other carriers before we get the coal on our line, but it didn't include any of the expense from the point where we received it from the connection to the point where it was issued for use, and the $282.17 is merely taking the tons of coal from the Alabama fields and the Virginia fields actually used in the Hines to Palatka movement, and find the ton miles created in the haulage of that coal over the balance of the system, outside of Florida, and to that ton mile was added [fol. 2436] the 5 mills per ton mile to represent the cost to the balance of the system. Yes, that $282.17 is a small amount of the $1,138.46 to charge for transportation. But bear in mind that the $1,138.46, the total charged for fuel, includes also whatever the transportation charges were that were paid to foreign lines, down to the point of delivery to the Atlantic Coast Line. It is a small amount because, as I testified before, I think I might properly have added that 5 mills per ton mile clear on down to Palatka where it was issued to the locomotives, but I stopped that charge at the State line. The $282.17 is all the transportation charge over the balance of the system. It is correct that that is a very small part of the expense because the transportation charge is the chief feature in the expense of producing fuel."

By Mr. Alston:

If I had carried it on into Florida and added in the additional haul from the State line to the point of issue it would have increased the State haul and have been to our advantage to have done so, but I didn't do it. I stated that the original cost of the coal does include the actual amount the Atlantic Coast Line Railroad Company paid from the mine up to the point where it was delivered on its rail.

By Mr. Adair:

Yes, substantially more than $282.17 is included in the $1,138.46 for transportation costs, when you add to it the transportation charge over foreign lines. His Honor's question was whether the $282.17 represented the total transportation charges over the system. When I say system I mean over the Atlantic Coast Line Railroad system. It does include a substantial amount of money for transporting over the foreign lines leading from the mines down to the Atlantic Coast Line Railroad, whatever that might be; I said that in the beginning.

[fol. 2437] Cross-examination.

By Mr. Adair:

In Exhibit 74-B, item 1, the cost of transporting locomotive fuel is included in that total operating expenses of $36,308,812.74. All of the cost of transportation of locomotive fuel is included in the $6,920,638.75, in item 2 of defendant's Exhibit 74-B. The out of pocket expenses for transportation of locomotive fuels is in that item 1—that does not represent all of the cost of transporting locomotive fuel. I took it all out of there in making the computation for the sole purpose of trying to clear up a confusion which to my mind is unnecessary. (Tes., p. 1,220.) I have frequently tried to explain this feature. If the expenses are included in the out of pocket expenses for the system and are not included in the Hines to Palatka movement you are not comparing like things. In other words, it is like comparing peaches and applies. You have in your system these expenses incurred for hauling this coal from the point received from the mines over the system to the point of issue. Now, when I take the straight out of pocket expenses, Hines to Palatka, if I don't add in the 5 mills per ton mile I have not the comparison figure in those out of pocket expenses to represent the expenses to the system for handling that company coal. That is the purpose of putting it in there, to make them comparable. The item "Total System out of pocket expenses, $6,920,638.75" does not include all of the expenses for transporting locomotive fuel, no more does it represent the cost of transporting any other commodity. It is impossible of ascertainment to say what proportion of the cost of transportation of

locomotive fuel is included in the item 2, "Total System out of pocket expenses," because, as I have said, I can only work it on this estimated basis, and I did this purely for the purpose of illustrating the principle that if I left the coal out of the Hines to Palatka movement I ought to leave [fol. 2438] it out of the system to make the figures comparable, and if I left it out of both places I would reduce this ratio from 19 to a lower figure, and the lower the ratio when you determine the out of pocket expenses the higher the total amount in the aggregate that you obtain. I have just answered that I can not estimate what proportion of the total cost of handling the locomotive fuel over the Atlantic Coast Line Railroad System is included in the second item there, the Total System out of pocket expenses. It is impossible for me to do it, because I have not the definite figures. I attempted to get it in a rough way, or approximate figure, as I have shown. I took the total tons of coal as consumed on the system and I multiplied that by the average haul of company material for all commodities. Now, I don't know the actual average haul of coal on the system. If I knew that I could more accurately develope the figure. As I originally stated, these figures are only relative approximations based on these figures to illustrate the principle and not as absolute figures at all. They are rough approximations. I had to assume in there that the average haul of coal was 160 miles. Now, some of our coal is delivered to us at Richmond, where there would be no haul at all, some very close to Montgomery, where there would be substantially no haul. Other hauls are handled substantial distances, but I don't know the average haul of the coal definitely. We don't keep our statistics that way. The distance from Montgomery to the Florida State line is 221.5 miles. That would reach the Florida State line just south of Thomasville. From Yemassee to the Florida State line it is 162½ miles on coal moving from the West Virginia fields. The distance from the Florida State line to Jacksonville, the point of connection with the Third Division, is 36.9 miles, and from the Georgia State line to High Springs Junction, of the Second and Third Divisions, [fol. 2439] is 67.69 miles. The figure on Item 4 of Exhibit #74-B "Tons of coal consumed on System, 1,389,629" is an approximation, but it is approximately correct. You deduct the whole of this item 7 from your out of pocket

expenses, the total cost of the transportation of fuel as near as you can approximate it from the out of pocket expenses for the system, in order to arrive at the figure I have just given, just for the purpose of illustrating the principle. At that time I had not thrown away any part of that $1,031,703.20, item #7, from the total operating expenses, but later on I did deduct it. On line 18 I show the effect of deducting the $1,031,703.20 from the $36,308,812.74, as well as the $6,920,638.75; that is, I took it off both, the same amount from both.

"Q. Are you rather now convinced that the total of $1,031,703.20, line 7, is not included in your out of pocket expenses, the total cost of transporting locomotive fuel over the System?"

"A. I think perhaps you misunderstood me, possibly; what I said was that in connection with handling fuel there were expenses other than out of pocket expenses. I mean, for example, our purchasing agent has certain expenses, and there are other expenses for billing it, etc."

I have taken out of the $6,920,638.75, as shown in item 2 of my Exhibit 74-B, what I show as item 7, $1,031,703.20, for the cost of hauling, based on 5 mills per ton. You understand that there were expenses other than out of pocket expenses in the item of $6,920,638.75. I am not saying that our out of pocket expenses for transporting locomotive fuel is five mills per ton mile. I use it as an assumed figure, because that is the same figure. I think I see your point. Let me see if I can straighten it out. I use 5 mills per ton mile there in this computation for the purpose of illustration, because I had used five mills per ton mile in the Hines to Palatka movement. Now, I have previously explained [fol. 2440] that in handling any company material for additions and betterments work we regularly assessed 5 mills per ton mile for the movement of that material and charged that to capital (Tes., p. 1225B) account; we capitalized that. That is a part of the cost of building a trestle we will say; that is part of the expense that is added for labor and material for building a trestle. That is not the whole transit charge that we are permitted to charge; you are permitted to charge up to seven mills, and we charge five mills. That is merely the average charge we assess on all grades of materials used in construction work. That five mills is

capitalized; it is added to the cost of construction work, whatever it is, whether bridge or trestle, or whatever it may be. Now concurrently we will credit an account, take investment credit, with the amount that was charged to capital account. Now that illustrates exactly our position here. We have the five mills per ton mile which we are just assessing as an average, the same as we do to any other company material, whether coal or rail or ties or whatever it may be, used in construction work. We should properly credit the balance of the system with that five mills per ton mile in their operating expenses and debit it to Florida or log train operation, just as we credit the operating expenses in the case of a capital expenditure and *and* add it to the capital expenditure. The situation is parallel here.

Now, as to the use of five mills, we were permitted by the Commission to use up to 7 mills a ton mile, but if we exceeded seven mills per ton mile we must then explain the details of that cost and justify it, and the roads almost universally deduct the five mills per ton mile as the cost of material for capital expenses.

[fol. 2441] That five mills per ton mile is the total sum that we transfer in connection with our capital expense for the transportation of company material, where we transfer anything. It might not represent the total cost. We could get 7 mills, but we elect to transfer only 5 mills to our capital account. You err in criticising for the use of the five mills; as that has been universally adopted, generally speaking, by all of the railroads of the country. That is to represent certain transportation costs. I would not say that it represents all. Apparently it does not represent all, if we are permitted to increase it from five mills to seven mills. Seven mills would represent all expenses, and five mills evidently does not. We do not transfer to the capital account seven mills because we elect to adopt the five mill rate, which is universally used. We are not necessarily required to use the five mill rate. That is the judgment of our management and I presume is based on the fact that they want to avoid controversy if they should make that rate other than the five mills. I did say that without the consent of the Interstate Commerce Commission we have the right to transfer seven mills per ton mile, and our management has elected to transfer five only. To

my knowledge they transferred no other transportation cost to capital account for transportation of the company material.

This item 1, on defendants' Exhibit 75-B, $1,138.49, contains a cost of five mills per ton mile from the point at which the Atlantic Coast Line Railroad receives the particular locomotive fuel, which was used in this Hines to Palatka movement. That item also includes an additional sum for transporting the coal from the mines to the junction point of the foreign carrier with the Atlantic Coast Line Railroad Company. The coal that went to Wilcox comes from the Alabama fields. It is delivered to the Atlantic Coast Line at Montgomery. I don't know the point [fol. 2442] of origin of the coal, and I don't know how much freight was paid on it; that was included in the average cost of the coal issued from the Alabama fields at Wilcox. That $1,138.49 includes the purchase price of coal, the transportation charges to the junction of the Atlantic Coast Line Railroad, and then 5 mills per ton mile from there on to the Florida line.

By Mr. Gutheim:

Yes, in my original study of this Hines to Palatka movement, I took the item of $2,398.55 and expanded it by my .19 and .25 ratios. It is correct that in expanding or in obtaining my ratios, I used the total operating expenses, which are $36,308,812.74, and divided it into the out of pocket expenses, to get the .19 ratio. To get the so-called .25 ratio I took our total haulage expenses of twenty-six million odd dollars and divided that into the operating expenses, whatever the amount was for hauling. In the first you use the total freight expenses to get the .19, and then you use the total haulage expenses to get the .25. Yes, in order to get the .19 item I used this same thirty-six million odd dollars, in item 1 of my Exhibit 74-B, and in that case all of the total haulage expenses for the locomotive fuel, whatever it was. (Tes., p. 1230B.) We don't set it up separately by items from our books. In the twenty-six million and odd thousand dollar item was likewise a part of the cost of transporting locomotive fuel; I couldn't say whether it was large or small.

"Q. Is it not a fact that a ratable proportion, as 26 is to 36, was in there, for the whole expenses?"

"A. That I couldn't say, because it depends, or not necessarily follows. In one case you are dealing with haulage and in another you are dealing with total expenses."

I couldn't estimate what was in there; I couldn't hazard [fol. 2443] an idea. We use the same out of pocket expenses in both cases, the same accounts. I use the total freight out of pocket expenses in one case and the total haulage out of pocket expenses in the other case; no, I use the $6,920,000 in both cases. I use the same figure of out of pocket expenses in obtaining both ratios. The cost of handling coal shown in my item 7 of defendant's Exhibit 74-B is approximately 14 and a fraction per cent of the total out of pocket expenses shown in item 2 of defendant's Exhibit 74-B; it is 14.9 per cent. No I don't think that 14.9 per cent of the total out of pocket expenses for the Atlantic Coast Line Railroad are included in transporting locomotive fuel up and down its own line. As I say, these figures are not supposed to represent the actual cost. They are used merely to illustrate the principle that whenever you deduct whatever the handling of the fuel is out of the feight expenses for the system you reduce the relationship of out of pocket expenses to total haulage expenses or to total expenses, and would, therefore, increase the expansion of your Hines to Palatka out of pocket movement. I have not assumed that approximately 14 per cent of the total out of pocket expenses from Hines to Palatka is for the transportation of company fuel; there is not anything in that Hines to Palatka item for the transportation of company fuel until I add in the five mills per ton mile. When you add in the five mills per ton mile you are increasing the out of pocket expenses of the Hines to Palatka movement approximately 11 per cent in round figures.

"Q. Take your out of pocket expenses, Hines to Palatka, without any five mills in it, and divide that into five mills?"

"A. You are not comparable with your 15 per cent when you do that."

"Q. Well, do it. In the case of the 14.9 per cent you [fol. 2444] were taking the total out of pocket expense?"

"A. Now, the comparable figure is $2398.55, and gives you approximately 11 per cent."

"Q. Be patient with us and do it our way."

"A. It is a calculation that I can make for you if you want it. It is approximately 13 per cent, about 13.3 per cent."

When you have increased by adding this five mills per ton mile, you have increased the $2116.00 13.3 per cent and $2398 by 11 per cent. And in determining my out of pocket expenses, and the balance of my total haulage expenses I expand the item $2398.55 in my original calculations by adding the other accounts not included in the out of pocket expenses proportionately in order to determine the total cost. In obtaining these figures I used this thirty-six million dollar total expense and the twenty-six million dollar total haulage expense, both of which include all or part of the total cost of handling locomotive fuel. When I say all or part I mean the total expenses would include all expenses and the haulage would include all haulage expenses.

The number of tons of coal consumed on the system as shown on my exhibit is the correct figure. It may contain or include tons of fuel consumed in office buildings and other buildings, etc., though I am not sure that it does, and it might be slightly excessive. Assuming that it is the actual consumption the 160 miles is the average taken from our report to the Commission, because it represents the average haul of company material of all kinds, including rail, ties, coal and everything else. I don't know what the average haul of company fuel is, the actual average haul, because we don't keep that figure separately. 160 miles is determined by taking the ton miles of all of the company [fol. 2445] freight and dividing it by the number of tons. The ton miles for all company freight is ascertained by taking the various shipments indicated and accumulating the totals, and working up the ton miles on it and dividing it by the tons. It is just the reversal of the other operation. That would involve us in the case of a car load of ties in ascertainment of the individual car, the ratio of the number of tons of ties times the number of miles the car was moved with the ties. (Tes., p. 1235B.) It would also involve us, with respect to the locomotive fuel, in ascertaining the ratio of the number of tons in an individual car by the number of miles that the car was moved with the fuel in it. Yes, in ascertaining the total ton miles of service on company material there was necessarily involved a compu-

tation of the ton miles of company coal in individual shipments. Having been done once there is a reason why it cannot be done again, because it is a very expensive operation to pick them out. When it is worked concurrently it can be done at a minimum expense, but when you go back and try to work out of it one commodity, for any one commodity the ton miles, you incur a tremendous expense. I presume that the Atlantic Coast Line Railroad has the basic information necessary to make the computation; nobody else has, but it would be at a prohibitive cost to produce it. I did not attempt to ascertain the total ton miles on locomotive fuel separately when compiling the total ton miles of service on company material.

Redirect examination.

By Mr. Alston:

The amount that I charged into this coal cost on the Hines to Palatka movement for the month of November, 1930, was $282.17; that was the five mills per ton mile. In my opinion that was an accurate and fair charge. And it should prop- [fol. 2446] erly be added to the other out of pocket expenses in order to state the correct expenses for handling the log trains. I might properly have added to that the mileage from the Florida State line to point consumed. By point of consumption I mean the point of issuance to the locomotive. In my Exhibit 74-B, line 2, I have "Total System, out of pocket expenses," $6,920,638.75; that includes all of the out of pocket expenses, including company coal; I have answered that before. That item of six million odd dollars includes whatever the actual cost was for handling that coal in those accounts. It includes the total out of pocket cost only. I say that I do not think it costs us 14.9 per cent of our total out of pocket expenses to handle company coal on our railroad, but that does not include the 13.3 per cent being charged into this service, which is a proper charge. It does not cost us 13.3 per cent over our entire system for out of pocket expenses for the handling of company coal, but that does not change my statement one iota, if that was 20 per cent or 25 per cent for the out of pocket expenses. If that five mills has been established as a reasonable charge when we determine the cost of handling a specific service we are certainly entitled to charge what we charge in our capital account to this par-

ticular service as a minimum. I don't know what the transportation of company fuel up and down our railroad cost. It was probably not 11.4 per cent of the total out of pocket expenses, but it does not change the five mills per ton mile as a reasonable charge for the Hines to Palatka movement. When I made up our cost study on the Hines to Palatka movement I charged that in as an element of cost and in addition I attempt to charge in 5¾ per cent as return on our investment and properly so. 11.4 per cent of [fol. 2447] the total charges was a fair and proper charge for the hauling of company coal in the Hines to Palatka movement.

(Witness excused.)

HENRY J. SAUNDERS, recalled by claimants, testified as follows:

Direct examination.

By Mr. Adair:

I am the same Mr. Saunders who has testified in this proceeding previously. Since I was last on the stand I have studied Mr. Lamb's testimony on behalf of the defendants. I investigated the assignment of freight operating expenses to the so-called haulage expenses, as done by Mr. Lamb, and I think that is one of the fundamental errors that Mr. Lamb has made in all of his calculations. I find by examining Mr. Lamb's Exhibit #5 that it is identical with the exhibit presented by Mr. Pettijohn relating the same subject. That was an allocation of freight operating expenses by showing an element of certain accounts to produce what was designated on Mr. Lamb's Exhibit #5 as the so-called haulage expenses. The Exhibit #5 is the basis of Mr. Lamb's determination of two ratios which have been referred to so many times in this hearing, that is, the ratio of out of pocket expenses to so-called haulage expenses, 25.9192 per cent, and the ratio of out of pocket expenses to total freight expenses, 19.0606 per cent. Now, insofar as the haulage expenses are concerned the result depends on the proper allocation of these charges. And as an example

I might point out the accounts under Maintenance of Equipment, where Mr. Lamb has considered Superintendence, Shop Machinery, Steam Locomotives (Tes., p. 1240B) and similar Accounts as generally applicable to haul, whereas in [fol. 2448] my Exhibit #79-A I used for these particular accounts 63½ per cent as applicable to line haul and the balance as applicable to terminal work. It is self evident that the terminal locomotive and machinery would incur a proportion of the expense. I think Mr. Lamb admitted this was an error insofar as this allocation went.

Now under the general heading of "Transportation" which appears on sheet 2 of Lamb's Exhibit #5 we find that the entire account of Superintendence has been allocated to Haulage as have the accounts of Dispatching of Trains, Weighing, Inspection and Demurrage Bureaus, and such accounts as Signal and Interlocker operation, Crossing Protection, Loss and Damage, Freight. That again is in error, and in my Exhibit #79-A I have used the percentage of approximately 63½ per cent applicable to line haul. The result of this difference between Mr. Lamb's determination of a percentage and mine is that through this error he has produced a lower percentage as to the relationship between the Haulage Expenses and the out of pocket costs. My percentage, as determined from my Exhibit 79-A was 31.53 per cent, and I believe that is much more nearly correct than Mr. Lamb's determination of 25.9192 per cent, for the reasons stated that he has not eliminated the charges which are properly terminal charges. That is for the haulage.

I was not here on yesterday, but since that time I have had a chance to look over the memorandum which Mr. Lamb testified to yesterday, the memorandum being entitled "out of pocket expenses and their application." I have in mind what Mr. Lamb had to say in there with respect to his charge of 5 mills per ton mile for the cost of handling locomotive fuel coal on the Atlantic Coast Line Railroad system over and above the cost of locomotive fuel coal charged in the Hines to Palatka costs study. There is one principle fundamental error, as I understand Mr. Lamb's calculations, and that is that he considered [fol. 2449] that the out of pocket costs bear all of this five mills per ton charge. Now that is not a fact because the cost of hauling company material is distributed over the

entire list of operating expense accounts. The Maintenance of Track, The Maintenance of Equipment, and the Transportation Expenses all contain some element of cost, and when the railroads adopted a 5 mill per ton mile charge to represent the cost of haulage, they do not assign it to Account 394, "Fuel for Train Locomotives," but they consider that is covered by all the entire operating expenses from the first account to the last. This 5 mills per ton mile, as has been stated by Mr. Lamb, is not a charge that the Interstate Commerce Commission permits the carrier to enter as operating expenses. The Commission has provided an account designated as "Transportation for Investment Credit," to which is credited the 5 mills per ton mile at the time any Capital Charges are concurrently made, if there is any material actually hauled, but that itself is not an operative expense cost, it is just an element of operating expenses for the amount of the capital charge that is being made. The Commission has permitted, as Mr. Lamb has stated, a maximum of 7 mills per ton mile, but the railroads generally have adopted 5 mills per ton mile as representing the actual cost as nearly as they can determine it. One road that I know of is using only 2½ mills per ton mile, and considers that is adequate to cover all expenses to haul company material. That road is the Northern Pacific.

Whatever the cost of transporting company material, whether used in operation or whether used in capital construction, it is distributed throughout the entire operating expenses. I can think of no account in the entire list but what would be affected to some extent by the movement of company material. It is correct that the utilization of this Transportation for Investment Credit is in the investments [fol. 2450] only as distinguished from the operating expenses. There has to be the credit to operating expenses, and often it is set up as an operating expense account, but it is always in red figures and carries the credit. Where you are hauling ties you charge to the Road and Equipment and Investment Account 8, which is Ties, and in that account will appear the same amount as appears as a credit to the Operating Expenses, Transportation for Investment. It is correct that the sum and substance of it is that you reduce the Operating Expenses by 5 mills per ton mile for the transportation of the material that actually goes in the

actual investment account. It is just the same as if another railroad was doing the work, only in this case they are trying to set up the actual cost of doing the work instead of showing a profit, which would be the case if the material was transported under a commercial rate by another railroad. There is specific authority in the Commission's classification of Investment accounts that authorizes the carrier to charge in this 5 mills per ton mile for such transportation; the Transportation Accounts provide for the haulage. There is no provision in the classification of Operating Expense Accounts that authorizes the carriers to charge that 5 mills per ton mile into the Cost of Locomotive Fuel, and there are specific rulings of the Bureau that it cannot be done. The haulage of this coal at half cent a ton mile, or 5 mills per ton mile, should not be allocated to the so-called operating expense accounts, or, as Mr. Lamb did, in the Hines to Palatka movement, directly to one account, Fuel for Locomotives, account 394. There, as stated by Mr. Lamb, that account on the Hines to Palatka movement, showed an amount of $1,138.49. Now that was made up of the system cost for the fuel itself of $856.32, and his arbitrary addition of $282.17 of the Company haul of 56,433 ton miles at ½¢ per ton mile. In my Exhibit 70-A I omitted this haulage cost, and then show two [fol. 2451] figures, one a correction of several adjustments, and one for this omission of coal haul only, that is $2,116.38, representing to Palatka out of pocket costs, eliminating the ½¢ per ton mile cost on coal. Now the system out of pocket cost cannot contain more than a proportion of the actual cost for moving company material. That cannot contain the entire ½¢ per ton mile that Mr. Lamb has allocated to these costs, so that if that by using a ratio based on the ratio of system out of pocket cost to total freight expenses, or as I have done, to Line Haul expenses, we apply this ratio to a figure which contains the entire 5 mills per ton mile, we have produced an inflation that is incorrect. In other words, Mr. Lamb suggests in his exhibit (Tes., p. 1245B) that this 5 mills per ton mile be all allocated to the out of pocket costs, and then that we apply to that ratio a ratio that is based on something else. The ratio which he determined was 25 and a fraction per cent, and I claim 31 and a fraction per cent for the same thing. Using either of these ratios, however, and applying them to the Hines operation, containing ½¢ per ton mile, it reflects the ½¢ per ton mile,

whereas it should only reflect a small fraction of the one-half cent per ton mile applicable to the out of pocket cost.

The 5 mills per ton mile is too much the way Mr. Lamb has handled it because he has added it to the out of pocket cost, whereas he should have added it to the entire operation expenses. That is a fundamental error. As a matter of fact, whatever the cost of handling the company's coal it is in the total Operating Expenses of the system. If Mr. Lamb had provided all operating expenses for the Hines to Palatka movement, instead of just these few that relate to out of pocket cost, then if he wanted to add cost of coal to them, that would be proper, but his total operat-[fol. 2452] ing expenses that he would have produced would have been based on some actual records that the Atlantic Coast Line has in its possession, and which are not produced here. But to get at it in this other way, where we are going to take a ratio of percentage, we are going to take a ratio that has the haulage cost in it, and, therefore, it would be improper to again add this 5 mills per ton mile to the result after we obtain it.

Having elected to use the ratio expansion method, substantially a reasonable portion of the total expenses are included in the total costs of the Hines to Palatka movement without adding in the 5 mills per ton mile, as Mr. Lamb has done. When we produce operating expenses in total by the expansion method we are of necessity including all of these haulage costs, including the cost of transporting locomotive fuel. So that to put it in there, as Mr. Lamb has done, by adding to the Locomotive Fuel Account the 5 mills per ton mile and also using the expansion ratio method there is a duplication. In the first place, it should not be assigned to any other account. He was entirely wrong in doing that. And then it should not be assigned to the group of accounts which are known as the out of pocket expense accounts.

By Mr. Gutheim:

I have had occasion to study Mr. Lamb's Exhibit 74-B which was introduced on yesterday on this subject. This exhibit itself contains a number of errors, which I perhaps can illustrate better by working out a separate exhibit of my own. I have prepared this statement here that I found necessary to write out, but I can explain that change. The

change is in item marked "13," eliminating everything in the line after the word "Revised," and insert "Ratio System Out of Pocket Expenses to Total Freight Expenses after eliminating Coal Haul Costs, 1.87%." In this ex-
[fol. 2453] hibit which we will mark 105-A, I have used the figures for the first eight items the same as Mr. Lamb used, except that for the total operating expenses and out of pocket expenses, and ratio of out of pocket to total freight expenses, items 1, 2, and 3, I have taken figures from my Exhibit #79-A, which is my allocation of the expenses. That is the average operating expense for the period here under consideration, instead of for the year 1930, as stated in item 1, of Lamb's exhibit. Now, in viewing this I am not agreeing that it is proper to obtain the ratio of the out of pocket expenses to the total freight operating expenses because I think the Line Haul expense is all that should be used, but I am going through Mr. Lamb's method simply to point out what I think is a fundamental error.

Item 1 is taken from my Exhibit 79-A, and represents the total operating expenses for the period here under consideration. Item 2 is taken from the same exhibit and represents the out of pocket expenses over the same period. These items correspond with Mr. Lamb's figures in his Exhibit 74-B, except that Mr. Lamb has used the single year 1930. Mr. Lamb's figures for tons of coal and average haul of ton miles, have been used, and the cost of hauling at 5 mills per ton mile as computed by him in item 7 has also been used. The deduction which should be made, in my opinion, should be from the total operating expenses instead of the out of pocket expenses, as Mr. Lamb did in his Exhibit 74-B. If you will notice item 10 of Exhibit 74-B you will find that Mr. Lamb has deducted the cost of hauling material in its entirety from the out of pocket expense. Now, as I previously explained, that is absolutely incorrect. The 5 mills per ton mile is intended to represent the entire [fol. 2454] cost of all operating expenses assigned to haul, and if you deduct that entire cost from a group of expenses known as out of pocket expenses you are making an excessive reduction of these, because the total of these costs is in the remaining operating expenses. It is correct that that gets back to the fundamental proposition that the 5 mills is the figure that covers all operating expenses and not merely out of pocket expenses.

"Q. You are taking it away from something that it was never in, in other words?"

"A. A portion of it was in there, but not that amount."

Now the reduction, as I would make it, in my exhibit is shown by item 12, which obtains $6,249,840.00, eliminating only 3% of these out of pocket expenses instead of the entire amount. The elimination of the entire amount could be properly made for all operating expenses, and that is represented on my exhibit by item 10, showing $33,321,359.00. The ratio after this elimination, of course, provides the same ratio as we had in the beginning because proper allowances have been eliminated from the two figures there that go to make up the ratio. So that whereas Mr. Lamb by his method obtained a reduction in the ratio of approximately 3% it indicates that that much error was made. The point that I am making there is that the ratio for out of pocket expenses to total freight expenses was 19%. After Mr. Lamb deducted the entire haulage cost from out of pocket expenses he obtained only 16%. Now if he had done that operation properly he would have deducted a part of the haulage cost from each of his items, that is, a part of it from Freight Operating Expenses, and part of it from out of pocket expenses, and he would have obtained the same ratio, 19% instead of the 16% that he did obtain. I thereby contend that his use of the 16% is in error, and that makes the remainder of his calculations entirely wrong. Now, on (Tes., p. 1250B) another page, [fol. 2455] on that Exhibit 75-B, he has carried this same calculation through in a similar manner, using the 16% previously obtained. So that exhibit would be wrong also. The elimination of the entire amount of haulage costs from the entire freight operating expenses and also from the entire operating expenses is a process that I am unable to follow, and it is very largely a duplication there that makes that calculation entirely wrong. That is shown on sheet 2 of Mr. Lamb's Exhibit 74-B. In other words, he deducts the complete amount from his total and then he deducts the same amount from a part of that total, making an overlapping double reduction.

(This statement headed "Analysis of Defendants Exhibit 74-B—Revised" was offered in evidence as Claimants' Exhibit 105A.)

I don't consider this computation and final result in Exhibit 105-A a proper computation; I didn't agree with the computations in the beginning; I got it up in this way so as to follow out my criticism of Mr. Lamb's exhibit. The purpose of this exhibit was for that reason only: The ratio of out of pocket cost per total operating expense is a ratio that I would not use in this log movement on account of the inclusion in that figure of the excess terminal expenses. These excess terminal expenses are not applicable to the log movement. I have Mr. Lamb's Exhibit 74-B before me: The total tons of revenue and non-revenue freight on the Atlantic Coast Line Railroad for 1930 was 21,379,619 tons. Now the tons of coal, as stated by Mr. Lamb on Exhibit 74-B, is 1,289,629 tons, and the ratio of these two is approximately 6%, slightly over 6%. That figure of twenty-one million that I spoke of comes from the exhibit we filed as shown from the annual report of the Atlantic Coast Line Railroad for the year 1930. Mr. Lamb computes the cost of handling the coal as $1,031,703.20, and [fol. 2456] the total out of pocket expenses for the system as $6,920,638.75. The ratio of the cost for handling this coal to the total out of pocket expenses is 14.9%. It is correct that for handling company coal the number of tons is 6% of all the revenue and non-revenue freight of the system, and Mr. Lamb has included 15% of the total out of pocket cost for handling all revenue and non-revenue freight for the system.

In his statement entitled "Out of Pocket Expenses and Their Application," Mr. Lamb has assumed this haulage expense for coal as $1,031,703.20, based on his 5 mills per ton per mile cost. Now if we use the ratio that he determines of 19.0606%, which is the ratio for the total system, out-of-pocket cost to total freight expenses, and apply that to the $1,031,703.20, which Mr. Lamb contends is included in the $6,920,638.75, total of out-of-pocket expenses, we obtain a figure included in operating expenses of approximately $5,400,000.00, which is additional haulage costs in the other operating expenses over and above the haulage costs, which Mr. Lamb says, or has, in his operating expenses. Now reduce that to a cost per ton mile and we find that it amounts to 2.6¢ per ton mile, but if we further expand that by the operation ratio for the system we find that it becomes 3.3¢, which would represent the rate that the Atlantic

Coast Line would charge if this were a maximum movement. In other words, you would have to have a movement of 3.3¢ in order that the operative ratio for the Atlantic Coast Line System come out whole on coal, the handling of which would cost you on his method of computation 2.6¢.

The average operating expenses per ton mile for revenue and non-revenue freight for the Atlantic Coast Line Railroad system was 9.2 mills per ton mile. That is computed from the figures already in this record, the total operating expenses for 1930 of $33,389,674.00, and the total of this [fol. 2457] revenue and non-revenue freight is 3,607,279,935 ton miles. The figure $33,389,674.00 was taken from my Exhibit 79-A, column 4, sheet 3. That was taken from the annual report of the Atlantic Coast Line Railroad, for 1930; that was the year of the Hines to Palatka cost study. It comes down to this, that whereas the total expenses of all operating expenses for handling all freight, revenue and non-revenue, that the Atlantic Coast Line Railroad handled in 1930 was nine and a fraction mills per ton mile, and the expansion through Mr. Lamb's method of 5 mills per ton mile for out-of-pocket expenses, would make 2.6¢ as the total operating expenses for handling the company fuel per ton mile; that is what it would do if his theory were correct. I think that explains the error in the theory. (Tes., p. 1255.)

Coal is a very low grade of freight, and probably for the quantity moved is the lowest grade of freight that predominates in railroad freight movements. In railroad practice our rate for high grade freight is ordinarily higher than the rate for low grade freight per ton per mile. Bituminous coal as handled in the Atlantic Coast Line Railroad System is generally long-haul freight. Long-haul freight has generally a lower rate per ton mile than short-haul freight. I have investigated the rate from several localities in the West Virginia mine district to Jacksonville and find that the rate runs from $3.95 to about $4.06 per ton. Jacksonville was the destination, but I took as the origin what is generally known as the Pocahontas region, a number of origin points in that region. The haul on coal from the Pocahontas region to Jacksonville would be in the neighborhood of 800 miles, probably nearer 900 miles. The average purchase price for coal that is used for locomotive freight in 1930 was running in the neighborhood of $150.

[fol. 2458] With a rate of $4.00 per ton, in a haul of 800 miles you would have five mills per ton mile for the rate per ton mile; that, of course, is a commercial rate, and the Railroad is supposed to have a profit in that.

I used the 1930 traffic units after investigation, and determined that 1930 was very close to the average for the period which I was adopting for my expenses. It was more a matter of convenience than any intentional or unintentional omission. Exhibit 80-A explains the use of these traffic units as for the particular year. If I might use the average for three years, as I did for expenses, I would have obtained substantially the same results on the average. I think Mr. Lamb has lost the intent of this Exhibit 80-A. The purpose of presenting 80-A was to determine or explain the allocations made in Exhibit 79-A, and in 79-A I was trying to allocate the Atlantic Coast Line's System Line Haul Expense insofar as I could to the State of Florida. I believe that I stated that that is an arbitrary allocation, but nevertheless I wanted to follow a reasonable basis for apportioning those expenses, and in doing this I chose the methods which are fully set out in that Exhibit 80-A. The Interstate Commerce Commission at the time they made settlements with the carriers under section 209 of the Transportation Act, which was to settle with carriers for claims resulting from Federal control, that is set out in Finance Docket 1606 of the Commission, allocated Maintenance of Way expenses on the basis that one-third of the expenses would vary with the use of the track, and in addition there they said that the use was reflected by the tons of traffic moving over the line. Now, if you will refer to Exhibit 80-A, you will find on accounts 202 and 220, which are the Road-Way Maintenance Accounts, as allo- [fol. 2459] cated by me, giving one-third weight to the relation of the tons of freight moving over the Atlantic Coast Line System to the tons moving in Florida in this year 1930 which was an average year. Yes, that means that I took those particular accounts and took one-third of them as the Commission did, and then I assumed that the total ratio between Florida and the balance of the system on the basis of the use of the track was represented, as the Commission said it was represented, by the tons miles of service in each. That was one of the bases usually known in assigning these allocations, due to reproduction costs. It was my thought that although the 1917 costs were not

as up-to-date as the present day costs, they represented the only authentic record for reproduction cost of this property; the additions and betterments that are made are generally made on a basis of higher costs than the original constructions, and even if additions and betterments had been added in my opinion the result would not have been as fully represented as an actual value determined as of a date more recent than 1917. The weight given to such items as Car Miles, Freight Train Miles, and Locomotive Miles, each assigns to Florida its proportion of the expenses on the basis of use, and I think that is entirely correct. I can see no error in that assumption. When we get all through we have a basis that assigns operating expenses to the State of Florida, and neither of the Atlantic Coast Line's witnesses in this case suggests any better. I believe that the allocation as I have made it is as nearly correct as could be made without an actual apportionment from the carrier's books to show what the expenses were. There is no data available to me or to the public which divides the investment as between Florida and the balance of the system except the 1917 figure as valued by the Commission in the valuation of the Atlantic Coast Line Railroad. If there are to be any additions and betterments [fol. 2460] since, as between Florida and the balance of the system, it is from records entirely in the possession of the carrier; there is nothing at all public of that kind.

With respect to the criticism by Mr. Lamb of my handling the matter of the switching at Palatka, the switching cost that I assumed was not that cost as Mr. Lamb suggests. I believe his criticisms were solely to the effect that I didn't give consideration to the facilities used at Palatka. Now, as I stated in my original testimony, I obtained the engine hour cost of $12.00 and this cost was based on a formal adoption by the railroads themselves in a large number of switching cases and known as the Sour-Covertson Formula. Both of these gentlemen are employed by railroads and made a full investigation before they determined the method of allocating switching costs. The formula includes such items as the use of the track, and all items of maintenance expense directly assignable to switching, and the $12.00 per engine hour was a fair average from a most complete study of this switching cost throughout the United States.

I have investigated Mr. Lamb's high coal consumption that goes into his cost study, and I cannot understand why in Florida, which is not a (Tes., p. 12003) mountainous country by any means, and which has an extremely mild climate, there should be the enormous coal consumption that has been claimed by Mr. Lamb. The record on file with the Interstate Commerce Commission shows as far as I could find no other part of the United States with such coal consumption. This Southern District averaged only 122 pounds for one thousand gross ton miles, and the entire United States averaged 121 pounds of coal per one thousand gross ton miles. I think that I pointed out previously that the Florida East Coast Railroad, which is the only railroad I believe that operates entirely in Florida, only averages 92 pounds. Mr. Lamb's figures were way in excess of these for the Florida traffic. During the winter [fol. 2461] months such roads as the Great Northern Railroad and the Northern Pacific which operate in extremely cold climates use a great deal more coal per thousand gross ton miles than they do in summer months. That is of record and stands on the records of the Commission. Temperature does effect the effeciency of the locomotive and the ability to haul traffic. That is always shown by the number of trains that ran all during the cold periods we have in the northern winter. Now, for instance, there is in reports of engineers the ability to handle freight under different temperatures. The northern roads change the rating of engines during the winter months frequently, and especially where there is any tendency to run the load limit on the engine. During the prosperous times train loads ran limited, and in the winter months the engine rating is materially reduced due to the climate.

There was one question about the time that I had allocated to trainmen and enginemen's wages on the Hines to Palatka movement. I made an apportionment of the reported pay roll expenses in my Exhibit 70-A. Train enginemen had been reported at $509.19, and trainmen at $362.86. I reduced those figures respectively to $344.80 and $427.00. Now in doing that I did not contend that these men were overpaid or should be paid less because Mr. Lamb under oath said that those were the records of pay roll expenditures, but I want to point out the average rates paid to train enginemen and trainmen on the Atlantic Coast Line System applicable to a run of this kind which would

produce a lesser sum or the lesser sums which I set up. Now in using those average rates paid the averages were arrived at by including all over-time. So that in effect I gave consideration to what would have been a nine-hour run, although I used eight hours in computing the day, but the rate itself was higher than the rate paid these lines to Palatka trainmen and enginemen due to the fact that it included the average system over time paid the men. I didn't contend that column 3 of Exhibit 70-A rep- [fol. 2462] resented the actual expenses insofar as train enginemen and trainmen were concerned.

After reviewing Mr. Lamb's additional testimony I think that these exhibits prepared by me and filed at the Jacksonville hearing represent what might be considered a fair picture of a fair and reasonable cost for this service. And the same is true with respect to my exhibit dealing with the movement from Homosassa to Lacoochee. That is also true with respect to my figures as to the cost of transporting logs generally in Florida; the studies as a whole I think present a fair picture of the fair cost of that type of service.

Mr. Lamb has employed here an expression in determining the estimated total cost of handling this train load movement as well as the other movement, or the so-called expansion method, for obtaining a ratio of his line haul expenses to his out of pocket expenses on the one hand of that calculation, and then the total freight expenses to his system out of pocket expenses on the other hand; he has the expansion method variously applied. The out of pocket expenses in reality contain some of the costs of the transportation of locomotive fuel, but only a fraction of them. This is the first time that I have ever seen the cost of transporting fuel being treated in a computation or calculation of this sort as an out of pocket expense. The salary of the Superintendent is applicable to the cost of transporting fuel the same as it is to transporting any other commodity, just as the cost of transporting fuel is applicable to all of the freight that is transported. If the cost of transporting fuel is added into the out of pocket expenses for this train load movement, and then that total, including the cost of transporting the fuel over the company's own lines, is expanded according to Mr. Lamb's expansion figures, the expansion figures are inflated beyond all reason, it contains [fol. 2463] the entire cost of haul expansion. At Mr.

Lamb's 5 mills per ton mile, which he put in the out of pocket cost as two hundred odd dollars, through his 25% ratio expansion that is immediately expanded, and it is included in total operating expenses as an additional element of haul. When expanded on his 25% basis it becomes about $1,140.00, and on his 19% expansion it becomes about $1,500.00. What it practically amounts to is that if this thing is put into out of pocket expenses, this estimated cost of transporting company fuel, it would be only four or five per cent, according to which of Mr. Lamb's ratios you use.

Account 394, Fuel for Train Locomotives, contains the expenditures for the basic cost of the coal at the mine, plus whatever transportation Atlantic Coast Line Railroad paid to foreign lines to bring it up to the point of delivery to the Atlantic Coast Line. That is in accordance with the Classification Accounts of the Commission. So far as I know that would be all it contains. That does not include the five mills per ton mile. Under Account 394, Fuel for Train Locomotives, Mr. Lamb has added a figure of $1,138.49; that figure includes the cost of the coal and the transportation of that coal to (Tes., p. 1266B) the junction with the Atlantic Coast Line Railroad, from the foreign carrier to the Atlantic Coast Line, and also five mills per ton mile for hauling over the Atlantic Coast Line to the Florida State line. There is $282 and some cents in there for that charge which is not a book charge by the Atlantic Coast Line Railroad, but it is a computed charge put in there by Mr. Lamb. Account 394, as set out by Mr. Lamb's Exhibit 5, contains only the permissible charges under the Interstate Commerce Commissions Classification order, and it [fol. 2464] does not contain any charges for haul at 5 mills per ton mile over the lines of the Atlantic Coast Line Railroad. Now Mr. Lamb's estimate of expenses for the Hines to Palatka movement under Account 394 is different from the method used for the system charges in his Exhibit 5 in that it not only contains all the expenses properly under the Commission's Classification of Accounts, but it also contains this added figure of $282.17, representing a haul at 5 mills per ton mile on the coal. The two are not coincidental the way they are set up and are not comparable. Line 4 of defendant's Exhibit 75-B is made up of the out of pocket expenses plus the balance of expenses, as Mr. Lamb has

computed them. One item of some twenty-three hundred odd dollars and the other of some ten thousand odd dollars. This ten thousand dollar item would contain the haul item, based as it is on the expansion ratio, which includes all the haulage cost; that would include the 5 mills per ton mile when expanded in that way. If you add that 5 mills per ton mile to the out of pocket cost we would have a duplication or double transportation cost.

Cross-examination.

By Mr. Alston:

In Exhibit 105-A the item 1 shows the total operating expenses, freight, for the A. C. L. system for the year of 1930 were $34,353,062.00. That was the average figure over 1929 to 1931 as set out in my exhibit 79-A. It does not purport to be anything other than it is. I corrected the statement on the exhibit where I had put it in as 1930, and that it was intended to be this average over this period from 1929 to 1931. The exhibit as it is does not purport to be anything more than it is. That line on Exhibit 105-A reads "Total Operating Expenses, Freight, for the A. C. L. System" for the average period 1929 to 1931, $34,353,062.00. It repre- [fol. 2465] sents an average twelve month period over the period we have under consideration here. It is the same method I have used in all my exhibits. There is no intention to do anything different, but merely to obtain an average report of operating expenses over this period. Mr. Lamb's exhibit shows the entire operating expenses, freight, for the Atlantic Coast Line Railroad System for the year 1930, I believe. My second line "Total System Out of Pocket Expenses, $6,443,134.00" is exactly what it purports to be, an average expense over the period under consideration for a twelve month's period. Yes, Mr. Lamb's exhibit for the year 1930 shows the same item as $6,920,-638.75. It is correct that my life 3 is "The Ratio System Out of Pocket Expenses to Total Freight Expenses (Line 2 divided by Line 1), 18.72%" against Lamb's 19.0606%. Mr. Lamb and I were not figuring on a different basis in principle in Lamb's Exhibit 74-B and my Exhibit 105-A for we used the same figures. I am using the figures I used in all of my exhibits, and he used them to illustrate 1930. (Tes., p. 1270B.) It is very evident that we have not used

the same figures. You are right that I then used the same number of tons of fuel, the same mileage and the same approximate ton miles, and the same cost of haulage based on five mills; then on my line 8 I show "Total System Out of Pocket Expenses, $6,443,134.00," which is the same as my line 2, and Mr. Lamb has $6,920,638.75, which is the same as on his line 2. Yes, then I deduct the cost of handling coal in the same amount as what Mr. Lamb has shown on his exhibit in line 9. Then the total operating expenses, after eliminating cost of handling coal, I have as $33,321,359.00, and Mr. Lamb has no such corresponding figure.

"Q. Suppose you had reduced line 7, which is the cost of [fol. 2466] hauling based on 5 mills per ton mile, by $500,000.00, or down to $500,000.00, what effect would that have on your further calculations in ascertaining the cost of the Hines to Palatka movement?"

"A. I didn't carry this on to ascertain the Hines to Palatka movement, but I will tell you the effect of it. I was showing merely the principle."

I was not giving a theoretical estimate; I am simply discussing Mr. Lamb's theory or principle, and attempting to show in principle that he was wrong. I don't know that I used exactly the words that the cost of hauling coal for the system was not a proper out of pocket charge, but I did say that the cost of hauling coal was not entirely an out of pocket expense. No, I didn't say the amount of it that ought to have been the out of pocket charge.

"Q. Suppose you took the expense of hauling coal from out of the system out of pocket cost and also took it out of the Hines to Palatka out of pocket cost, what would be the effect? I don't mean as to dollars and cents, I mean as to equality?"

"A. I have not done anything like that. I don't understand what you are driving at there, because you are stating an impossibility."

The cost of hauling coal cannot be in the out of pocket cost in its entirety; I have not stated how much of it should be in out of pocket cost. That is something that the carriers might be able to produce if they used their own figures. I state again that you are talking about an impossibility in asking of eliminating the haulage of coal from the out of pocket expenses for the system and also eliminating the

haulage of coal cost from the out of pocket cost for the Hines to Palatka movement, for you cannot take ten things away from something that has only eight. You cannot take a thing out when it is not in there. No, my evidence leaves [fol. 2467] no standard for applying the cost of coal for the Hines to Palatka movement; my evidence was put in in connection with my direct testimony. I think this is the proper way to handle it.

"Court: If it is true that it costs more in the way of transportation charges or expenses to get coal for the Hines to Palatka movement than it does to other lines of the system, ought there not to be somewhere this extra charge made for the Hines to Palatka movement?"

"A. I think a charge should be made that properly expresses the expense, but I believe that in the method I have followed I have taken care of that, because there are other expenses that off-set any so-called excess expense in hauling this coal to Florida. Now there are other long hauls on the Atlantic Coast Line System besides in Florida, and the costs of these hauls are in total operating expenses, and by the exact method I use we get all the operating expenses with reference to haul presented in the Hines to Palatka movement, so I don't see where we could add the percentage of excess because this particular movement is in Florida. I think there are too many other figures that would have to be considered, such as originating traffic and other matters we have not gone into."

"Court: If you didn't permit the Hines to Palatka movement to charge up out of pocket expenses of this five mills per tone mile, and you only allowed them pro rata charges in the System's expenses for hauling coal, and it did cost more to get the locomotive fuel for the Hines to Palatkka movement than others, would you not be charging less for the Hines to Palatka movement than others, would you not be charging less for the Hines to Palatka movement than ought to be charged?"

"A. Under the statement of those facts alone you prob- [fol. 2468] ably are right. I can go at it this way: The ratio that I used shows on out of pocket expenses 31½%; we will say, of the total line haul expenses. Now the remaining 68½% contains the haul of company coal to other

parts of the Atlantic Coast Line System. Now it might be that the average haul to Florida was the average of this 225 and 262 miles that we have here in the record, and it might be that the average for the system would be 160 miles, and there would be a small amount in favor of Florida. There are other figures we have not gone into which we have in the operating expenses; that is, a great deal of different traffic. That small difference in percentage would be compensated for fully by other things. If I were going to add anything to the present average bonus for Florida for hauling this coal it would not be added to the out of pocket expenses if these expenses by the percentage method took place, but it would be a small additional matter to total operating expenses after you had expanded for the out of pocket expenses to total expenses. The effect of adding it to the out of pocket expenses is that it always pyramids the additional when you put it in there."

(Witness excused.)

Mr. LAMB was recalled to the stand by Mr. Adair:

"Q. If the Atlantic Coast Line Railroad from a general fund in its treasury were to pay all the freight operating expenses, if it were capable of exact mathematical calculation, for the month of November 1930, or for the year 1930, and then were to ask each line that did any hauling to pay you what you considered their part of these expenses, and for instance, to carry through the Hines to Palatka route, and others in the same way, to pay their out of pocket ex-[fol. 2469] penses for engineers, etc., and also five mills per ton mile charged for hauling coal, and then also require them to pay their proportionate part of the system's charge as shown in your exhibits, if they all did that wouldn't you have more money than you paid out?" (Tes., p. 1275.)

"A. I think I can answer that in this way: If we were making a segregation of expenses, as indicated by you, to various different parts of the road, the plan would be this: We would charge the Hines to Palatka section of the road with this 5 mills per ton mile for that haul, and we would credit the balance of the system with 5 mills per ton mile for that haul."

That is what I have done in effect. I have not given the full credit to the system; I have not given the system the credit for it. We take the out of pocket expenses for the system, which includes the cost of handling this coal, and could we definitely determine what that is we would deduct that from the system's out of pocket expenses, and that would give us a lower ratio to the total expenses than we have used; and then we would divide the expenses of the Hines to Palatka movement and would have to charge them with this 5 mills. We would credit the system and charge the other division. In other words, we would attempt to segregate our expenses for States, and we would charge each state with the cost of performing the movement of company materials and we would credit each State that had performed that service for them. Of course, it would be a very calculating computation if you were trying to segregate, but that would be the proper method of doing it. No, you would not credit out of pocket expenses, you would credit the operating expenses parts of the system. Now, I happen to know, in the case of the Seaboard Air Line Railway, which is in the hands of receivers, that they are compelled under the mortgage agreement to segregate [fol. 2470] their road into sections covered by individual mortgages to learn what mortgage section is paying the interest on the bonds. Now they make that computation, they credit one division for the services performed by another, and vice versa, and then keep them up in their regular accounting because of the receivership, and to develop the earnings on each part of the line. I have seen statements which I have in my office of where they have made the same identical credits and debits as I have just indicated to you, and that is approved by the Court in connection with the Seaboard Air Line receivership. They segregate the expenses by each mortgage section; they go into elaborate detail, which is necessary when you divide your operating expenses by any division or section, and they have apportioned the Seaboard Air Line into segregated mortgage sections, and the branches operated under that mortgage, and there is a credit given and debit given for handling company materials. There would not be a credit to Florida to any appreciable extent because Florida does not perform a like service for the balance of the system as the system performs for Florida. What I might say is

this: By reason of the debts and credits between the different sections of the system that would prevent a duplication.

Mr. Saunders recalled by Mr. Gutheim:

"Mr. Saunders: It is not a fact that Florida does not perform this service for the balance of the system; that cannot be the fact because Florida creates much traffic that moves over the rest of the system, and this being commercial traffic, Florida furnishes a service for the rest of the system. There is also a certain amount of company freight originating in Florida, for which Florida furnishes service.

By Mr. Alston:

Products of forests, I think, are the principal items originating in Florida. In the past there has been some of that used by the company out of Florida. I cannot state what is being done today, but I know in the past Florida [fol. 2471] has shipped ties that were used on the other parts of the system. I don't recall anything said by other witnesses which would contradict that statement. I know of no coal originating in Florida.

After studying the facts, I have worked them up in my exhibit, and such information as I have found from an examination of the record, I am fully convinced that the rates as published in the original Cummer scale are just and reasonable for the transportation of logs in Florida in these two train load movements during the restitution period.

(Objection by Mr. Alston.)

C. L. Effinger, sworn by claimants, testified as follows:

Direct examination.

By Mr. Adair:

I am Mr. C. L. Effinger; I live at Shamrock, Florida, in Dixie County. I am assistant secretary of the Putnam Lumber Company and have been ever since the company

was organized." The bookkeeping and the general office work of the company is under my supervision. Yes, the Putnam Lumber Company is the same Company that operated a mill at a place called Milldale, near Jacksonville, Florida, and also operated a mill at a place called Ortega, near Jacksonville, Florida. When our company operated that mill at Milldale and the mill at Ortega the logs that were sawed at those mills came from Dixie County, the shipping point being Cross City, Florida. The logs came to our mill via the Atlantic Coast Line Railroad. (Tes., p. 12808.) They came in trains. That condition prevailed during the year 1926 and part of 1927.

"Q. Can you tell me the amount of money paid to the Atlantic Coast Line Railroad by the Putnam Lumber Company for the transportation of logs in train load quantities to Milldale, Florida, and to Ortega, Florida, during the [fol. 2472] year 1926?"

(Objection by Mr. Alston.)

"A. I cannot give it to you separately as to Milldale and Ortega, but I can give it to you in dollars paid the Atlantic Coast Line Railroad for the year 1926, and the time in 1927 during which we were operating, for the transportation of logs in train load quantities."

For the year 1926 we paid the Atlantic Coast Line Railroad $200,014.50, and in 1927, $107,324.38. We operated at Ortega, I think, until the latter part of April, 1927, and at Milldale we discontinued operation on the 7th of September, 1927. On the 7th of September we quit sawing and started building a mill down in the woods, at Cross City. The two above-mentioned sums were paid to the Atlantic Coast Line Railroad for transportation in train load quantities during those years from Cross City to Jacksonville. Our company is operating at Shamrock, that is our post office. Shamrock is about half a mile from Cross City. Our company has been selling the Atlantic Coast Line Railroad Company considerable lumber, ties and piling within the last four or five months. That is shipped from Cross City, and most of it is consigned to the Roadmaster at Florence, S. C., Rocky Mount, N. C., and Montgomery, Alabama. The average shipping has been about five cars a week during the past four or five months. The Atlantic Coast Line

Railroad Company was not buying any company material for shipment to points elsewhere than in Florida during the years 1928 and 1929 from us. I know that they have tie inspectors in that County all the time, and have had for the past fifteen years. They inspect ties and piling for the Atlantic Coast Line Railroad. I have been told that all of it went out of the State of Florida.

"Mr. Alston: Your Honor, we object to that as hearsay."

"Court: That is objectionable, but you can leave it in if you wish, to be passed on later."

[fol. 2473] We have tried to get the business of shipping lumber for the Atlantic Coast Line Railroad ever since we first started operating in Florida in 1915, making bids on it for shipment out of Florida. They sent out inquiries through the purchasing agent.

Cross-examination.

By Mr. Alston:

We get our logs now from the woods in Dixie County on our own tram road. We manufacture them at Shamrock. We ship the manufactured material everywhere in the country, both domestic and export. It all goes out of Cross City on the Atlantic Coast Line Railroad. For the month of June we shipped 6,100,000 feet, and it will average 17,000 feet to the car. That has kept up pretty steadily; we have been running steadily for over six or eight weeks. We started business at Shamrock in February, 1927. We put our mill there because it was in the woods near our timber. The depression struck our business the first part of 1930. We went through 1929 very well. I don't think we felt any of it in the middle of 1929. It started slackening off in 1930; it fell off gradually, just like every other manufacturing business. We have never closed down. We did greatly diminish our shipments; during 1931 and 1932 we were running just about 20% of capacity. (Tes., p. 1285B. There was no demand for lumber. We have a good trade throughout the country. We ship into the Northeast and Middle West and export. The Atlantic Coast Line Railroad buys ties, timber and piling.

(Witness excused.)

C. R. McPherson, recalled by claimants, testified as follows:

By Mr. Adair:

I have already been sworn in this hearing, and I am the same C. R. McPherson who testified before. I am president of the Wilson Cypress Company. My company has a large claim for restitution in this proceeding. When these log trains arrive at Palatka there are two cuts from the tracks of the Atlantic Coast Line Railroad Company into the tracks at our mill. We can handle 23 cars on our dump [fol. 2474] switch without difficulty. I don't recall what our average train is as it varies in different periods, but we never handle over 45 cars a train. I think they run about 40 or 42.

I have made an investigation to determine whether or not there is any record or evidence in our establishment of there ever having been more than two cuts to a train in the switching operations of our loaded cars in and our empty cars out during the restitution period.

(Objection by Mr. Alston.)

"Court: I expect the rule of evidence has been violated though there are a great many objections. I will let it in, but I doubt if anything that anybody else had told him would be admissible. He can testify to any fact that existed, whether it was from the source of somebody telling him or not."

(Witness continuing:)

I have been there myself, and while I have not seen a cut every day myself, certainly from what I know of my own knowledge and what I understand from the employees, who are in charge of the dumping, there has never been more than two cuts.

(Objection by Mr. Alston that the statement is hearsay.)

I was at the plant all of the 1931 period, and portions of the 1929 and 1930 periods. I was president of the company, but I was not general manager in January, 1931; however I spent a great deal of my time there.

"Q. Are you in position to testify as to what was the custom there as to these shipping operations, I mean switching operations?"

"A. I think I am."

"Q. How many cuts to a train were there?"

"A. There were two cuts to the train."

[fol. 2475] After the order of the Interstate Commerce Commission had been entered I went to Wilmington to talk with the officials of the Atlantic Coast Line Railroad with respect to the situation that we found ourselves in. I went there the last part of January, 1929, and talked with Mr. M. D. Davis. I asked him to permit us to enter into a trackage arrangement with them so that we could haul our logs to Palatka. He refused to give in to us. In the same month he made a trackage agreement with the Brooks-Scanlon Corporation over the same tracks where he told us he couldn't do it for us, and at the same time there was a trackage agreement running from Hines for the Burton-Swartz Company to Perry.

(Objection by Mr. Alston.)

At that time I did not know that the Atlantic Coast Line Railroad Company had made a trackage agreement with the Brooks-Scanlon Corporation at or about that time. I first learned of it at the Jacksonville hearing last spring. I did not know of the Burton-Swartz contract, either; I learned of that some time prior to the Jacksonville hearing. The Brooks-Scanlon Corporation movement would be over part of the same lines that our log trains moved over, and the other would originate at Hines and move over the same division in an opposite direction. (Testimony, p. 1290B.)

At the time that negotiations were taking place between our company and the Seaboard Air Line Railroad, and the Southern Railway System and the G. S. & F. and the Live Oak, Perry & Gulf Railroad concerning the proposed trackage agreement, the L. O., P. & G. tracks were not in very good shape, but they were doing repair work on it and we figured it would take some time before they got it completed. We figured we could handle the movement by using our own locomotive, picking up the trains and hauling them [fol. 2476] either to Mayo Junction or to Live Oak. We planned to use the present locomotive that hauls 20 cars

at a clip to Hines to hook on to the Atlantic Coast Line Railroad. We finally gave up the idea because of the three intersection points; it went through three railroads, the L. O., P. & G., the Seaboard and the Southern, and at each intersection there would be an inspection, and we were afraid of the loss in shipping from being thrown out by the inspector, and we wouldn't have enough logs to run our mills steadily; and then we were in the litigation before the Supreme Court and thought we had a case there so we gave it up and hauled for a while over the Atlantic Coast Line Railroad while the litigation was pending.

Yes, our decision was to some extent influenced by the condition of the L. O., P. & G. Railroad to Mayo Junction. I think that distance was about 19 miles. It was feasible to go into Live Oak with the split train even before the repairs were completed. It would increase our transportation cost somewhat, but it would not increase the amount of trackage we are required to pay the railroad; the distance would be just the same; it would run down a different locomotive. A large locomotive ran down the L. O., P. & G. Railroad.

I was present the other day when Mr. Willoughby testified that the State of Florida performed no service for the Atlantic Coast Line Railroad Company in the haulage of company material in Florida. We have been operating a small mill at Hines in the timber. We put it over there because we cannot stand the log rate, and we are cutting that timber insofar as we can into railroad timbers and ties. We have been selling the Atlantic Coast Line Railroad right along since we started, and I checked over personally [fol. 2477] our bills of lading and we have only shipped one car for destination in Florida; everything else is for other points on their system in Georgia, South Carolina, North Carolina and Alabama. I think we have sold them about 25 cars; and we started shipping them the first of March this year. That would be up to the first of July. Until we put that small mill in the woods we were not cutting any of that sort of material. Those sales to the Atlantic Coast Line Railroad Company were made through general solicitation from bids. Those solicitations of bids went to other lumber companies than to our company; I think they put them out generally to any one that was cutting any class of material.

(Witness excused.)

A. G. CUMMER, recalled by claimants, testified as follows:

Direct examination.

By Mr. Adair:

I was sworn at Jacksonville in this case in May, last. I am the same A. G. Cummer who testified before the master in the re-reference proceeding. I am president of the Cummer Cypress Company. My company has in this case a large claim for restitution. We shipped logs from Otter Creek, Florida, in train-load lots to our mill at Lacoochee, in the years 1926 and 1927. I can inform you of the number of cars of logs and the amount of revenue which moved in that train-load movement and resulted from that train-load movement from Otter Creek to Lacoochee in the years 1926, 1927 and 1928.

(Objection by Mr. Alston.)

In 1926 we shipped 3,761 cars and paid the Atlantic Coast Line Railroad $46,506.15 in freight. In 1927 we shipped 4,783 cars and paid the Atlantic Coast Line Railroad $58,011.70; in 1928 we shipped 1,369 cars and paid the Atlantic Coast Line $15,743.50. The reason that we shipped so [fol. 2478] many fewer cars and paid so much less money in 1928 than in 1927 was that we had cut out our timber in Otter Creek in 1928, and had prepared to move our log camp to Homosassa (Tes., p. 1295B), which we did in 1929, and started to cutting there in 1929.

Cross-examination.

By Mr. Alston:

Our business did not fall off until 1931; then it fell off severely, and it has been going down ever since. Our business has not picked up as much in cypress as it has in yellow pine, though there is a fair demand now. Yes, that falling off of business was rather universally true.

(Witness excused.)

Mr. C. R. MCPHERSON was recalled by Mr. Alston:

Our business has been generally falling off and the price also since 1926. I think our peak year was about 1923. We

got better prices in 1923, but our volume was not affected so much until 1926, and then we gradually fell off. It began falling off in 1926 in volume and in price. Very few logs were bought in that period. I think the only logs we ever purchased, as shown in the testimony in this case, were bought during the restitution period; while we bought some logs, it would amount to about 2% of our cut. We manufactured all kinds of lumber during this period. We didn't manufacture any railroad material; we manufactured lumber into piles so it would be dry and suitable to all sorts of causes. It was cypress lumber. Our logs cost us about $21.00 a thousand feet at the mills; that was after paying the Cummer scale. We got about $33.00 a thousand feet for the lumber manufactured out of the logs. It is hard to say how many feet of logs it takes to make a car of lumber, but it takes about three or four cars of logs to make [fol. 2479] a car of lumber. We don't scale our logs. If you had a thousand feet of logs the number of board feet you would get out of it would depend upon the log scale you are using. I do not have the log scale. There are about fifteen different scales, but we never scaled our logs; we went by our mill cut. All of our figures are based on what the logs produced. This business of scaling logs is a pretty complicated sort of thing, particularly cypress logs with so many defects; I don't qualify as an expert. The scale does give it exactly, but there are different scales. It is true that under the Doyle scale a thousand feet of logs is supposed to make a thousand feet of lumber, but it varies with the size of the logs and the defects. The feet of lumber in a log would also depend on the length of the log or the size of the log.

(Witness excused.)

OFFERS IN EVIDENCE

(Thereupon the claimants offered in evidence as claimants' Exhibit 106-A, the title page of Mileage Tariff No. 7-D, issued June 26, 1923; also Mileage Tariff No. 7-G, American Railway Association, issued August 9, 1929, effective September 25, 1929; also Mileage Tariff No. 7-H, issued August 10, 1931, and effective September 15, 1931; all being issued by the American Railway Association Tariff Bureau, B. T. Jones, Agent. The Nashville, Chatta-

nooga & St. Louis Railroad, Supplement No. 7 to Rate Issue No. 41296, issued August 29, 1932, and effective October 6, 1932, certified by the Secretary of the Public Utilities Commission, was offered in evidence by the claimants as Exhibit No. 13. Title page and extracts from Supplement No. 3 of the Illinois Central Railway Company, Freight Tariff I. C. C. No. 7786; title page and extracts from the N. O. & St. L. Railway, Log Traffic No. 3, I. C. C. No. 3284-A; and Supplement No. 4 to the Yazoo and Mississippi Valley Railway Company Tariff, I. C. C. No. 7810, and Supplement No. 1 to Mobile & Ohio Railroad Company [fol. 2480] Tariff, I. C. C. No. B. H.-60; were offered in evidence by claimants as claimants' Exhibit No. 14.)

The following figures of the tons of logs and revenues produced on the railroads therein referred to were read into the record by the claimants as an excerpt from the Freight Commodities Statistics, Class 1 Steam Railways in the United States, for the year ending December 31, 1928, certified by the Interstate Commerce Commission:

	Tons	Revenue
Atlantic Coast Line R. R.	1,422,874	$997,139.00
Yazoo & Miss. Valley R. R.	1,036,911	921,400.00
Southern Railway	735,038	574,998.00
Seaboard Air Line Railway	414,939	292,471.00
Illinois Central	451,629	532,144.00
Louisville & Nashville R. R.	269,424	441,671.00
Central of Georgia Railway	269,666	224,312.00
Norfolk & Southern R. R.	250,837	145,861.00
Mobile & Ohio	110,010	136,976.00
Gulf, Mobile & Northern R. R.	122,520	111,950.00
Gulf & Ship Island Rwy.	91,006	70,197.00
New Orleans & Grt. Northern R. R.	91,120	58,712.00
Nashville, Chattanooga & St. Louis	95,474	114,853.00
Georgia & Florida Rwy.	77,800	59,115.00
Clinchfield Railroad (CC&O)	73,162	69,048.00
Charleston & Western Car. Rwy.	33,366	20,413.00
New Orleans & Southeastern	36,197	29,614.00
Cinn., N. O. and Texas Pacific	38,368	44,147.00
Georgia Railroad	30,052	29,990.00
Alabama Great Southern	32,508	26,783.00
Ga. Southern & Florida	54,520	32,691.00
Atlanta, Birmingham & Coast	34,702	22,514.00
Mississippi Central	50,953	34,509.00
Columbus & Greenville Rwy.	15,659	9,522.00
Western Rwy. of Alabama	54,481	33,276.00
Tennessee & Kentucky Rwy.	19,603	20,997.00
Florida East Coast Rwy.	15,687	11,789.00
Atlanta & West Point R. R.	8,253	4,560.00
Northern Alabama Rwy.	1,234	875.00

[fol. 2481] Page 42 of the Revised Schedule of Wages, Rules and Regulations for Firemen & Hostlers of the At-

lantic Coast Line Railroad Company, which is headed the "Weights of Locomotives on Drivers," was read into the record by claimants, as follows:

Numbers		Numbers		Numbers	
From Inclusive	To	From Inclusive	To	From Inclusive	To
		Less than 80,000 pounds			
1	33	70	76	1175	....
35	37	88	92	1183	....
39	42	96	99	1260	1264
43	52	300	304	1266	1269
54	....	521	522	....	....
56	68	526	....	....	....
		80,000 to 100,000 pounds			
93	94	306	....	659	660
105	110	628	....	662	670
113	117	650	....	1434	1435
		100,000 to 140,000 pounds			
118	100	307	309	900	1044
200	254	312	314	1100	1135
....	....	316	399	1280	1295
		140,000 to 170,000 pounds			
260	286	700	720	1138	1158
400	482	1045	....	1500	1544
		170,000 to 200,000 pounds			
800	811	918	....	1600	1707
813	817	1545	1569	1710	1764
....	....	....	....	8000	8009
		200,000 to 250,000 pounds			
820	836	1200	1234	*1708	*1709
		250,000 to 300,000 pounds			
		300,000 to 350,000 pounds			
2000	2019	....	....	....	....

* Equipped with boosters.

[fol. 2482] Letter under date of July 24, 1933, with respect to the amount of fuel used in the Homosassa to Lacoochee log trains was offered in evidence as claimants' Exhibit 107-A.

Certified copies of extracts from the 1928 annual reports made to the Interstate Commerce Commission by the Atlantic & Yadkin Railroad Company and by various other railroad companies were offered in evidence as claimants' Exhibit 108-A.

Mr. Perrin then offered in evidence a certificate relating to Class 2 railroads in the South and an analysis of same as defendants' exhibits 76-B and 77-B.

Objection by Mr. Adair.

"Mr. Perrin: Now, I just want to make one short statement about the two exhibits, 44-B and 77-B; there appears the tonnage of all Southern Railroads' comparisons for the two-year period, including Class 1 and Class 2 railroads. Class 3 railroads do not make such reports. They, however, are railroads that earn less than $100,000.00 per annum gross revenue. And with respect to Exhibit 77-B, I merely want to mention that the Class 2 lines are arranged in the order of importance in tonnage, such as the Natches, Columbia & Mobile Railroad, the New Orleans, Natalbany & Natches Railway, both of which have here in this two-year period in excess of 400,000 tons of logs. That looks abnormal for a Class 2 Railroad, but it is accounted for by the fact that there are plant facilities lines dealt with by the Interstate Commerce Commision as such, the first being owned by the Vickerson Lumber Company, and the second by the Natalbany Company."

(The taking of testimony by both sides was then closed.)

[fol. 2483] In United States District Court

Order Allowing and Approving Narrative Statement of the Evidence

The foregoing and attached narrative statement of the evidence is hereby allowed and approved, and the same is hereby ordered filed as a statement of the evidence to be included in the record on appeal and cross-appeals in the above styled cause.

Judges Underwood and Barrett are both absent from the State.

Dated this Sept. 1, A. D. 1934.

Sam'l H. Sibley, United States Circuit Judge. Bascom S. Deanes, United States District Judge.

Endorsed on cover: File Nos. 38,972, 38,973. N. Georgia, D. C. U. S. Term No. 344. Atlantic Coast Line Railroad

Company, Appellant, vs. State of Florida and E. S. Matthews, Mamie Eaton-Greene, and W. B. Douglas, etc., et al. Term No. 345. State of Florida and E. S. Matthews, Mamie Eaton-Greene, and W. B. Douglass, etc., et al., Appellants, vs. The United States of America, Interstate Commerce Commission, et al. Filed September 6, 1934. File Nos. 344, O. T., 1934; 345, O. T., 1934.

(5690-C)